As filed with the Securities and Exchange Commission on June 23, 2021

No. 333-256871

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

AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TORRID HOLDINGS INC.

(Exact name of registrant as specified in its charter)

Delaware	5600	84-3517567
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

18501 East San Jose Avenue
City of Industry, California 91748
(626) 667-1002
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Elizabeth Muñoz
Chief Executive Officer
Torrid Holdings Inc.
18501 East San Jose Avenue
City of Industry, California 91748
(626) 667-1002
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies of all communications, including communications sent to agent for service, should be sent to:

Joshua N. Korff Michael Kim Aslam A. Rawoof Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 (212) 446-4800	Michael Benjamin Stelios G. Saffos Latham & Watkins LLP 1271 Avenue of the Americas New York, New York 10022 (212) 906-1200

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

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

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

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

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

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒ (Do not check if a smaller reporting company)	Smaller reporting company	☐
		Emerging growth company	☒

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be registered(1)	Proposed Maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)(3)	Amount of Registration Fee(4)
Common stock, $0.01 par value per share	9,200,000	$21.00	$193,200,000	$21,079

(1) Includes 1,200,000 shares of common stock that the underwriters have the option to purchase from the selling stockholders.
(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended.
(3) Includes the offering price of the 1,200,000 shares the underwriters have the option to purchase from the selling stockholders.
(4) Includes $10,190 of fees previously paid.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. The prospectus is not an offer to sell these securities nor a solicitation of an offer to buy these securities in any jurisdiction where the offer and sale is not permitted.

Subject to Completion
Preliminary Prospectus dated June 23, 2021

PROSPECTUS

8,000,000 Shares

TORRID

Torrid Holdings Inc.

Common Stock

This is the initial public offering of Torrid Holdings Inc. ("Torrid"). The selling stockholders identified in this prospectus are offering 8,000,000 shares. Torrid will not be selling any shares in this offering and will not receive any of the proceeds from the sale of the shares being sold by the selling stockholders.

Prior to this offering, there has been no public market for the common stock. It is currently estimated that the initial public offering price per share will be between $18.00 and $21.00. Torrid has applied to list the common stock on the New York Stock Exchange ("NYSE") under the symbol "CURV."

After the completion of this offering, affiliates of Sycamore Partners Management, L.P. ("Sycamore") will continue to own a majority of the voting power of shares eligible to vote in the election of our directors. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of the NYSE. See "Management—Corporate Governance."

We are an "emerging growth company" as defined under the federal securities laws and, as such, will be subject to certain reduced public company reporting requirements. See "Prospectus Summary—Implications of Being an Emerging Growth Company."

Investing in the common stock involves risks that are described in the "Risk Factors" section beginning on page 21 of this prospectus.

	Per Share	***Total***
Public offering price	*$*	*$*
Underwriting discount	*$*	*$*
Proceeds, before expenses, to the selling stockholders	*$*	*$*

The underwriters may also exercise their option to purchase up to an additional 1,200,000 shares from the selling stockholders, at the public offering price, less the underwriting discount, for 30 days after the date of this prospectus. Neither the Securities and Exchange Commission (the "SEC") nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares will be ready for delivery on or about , 2021.

Morgan Stanley *BofA Securities* *Goldman Sachs & Co. LLC* *Jefferies*
Baird *Cowen* *William Blair*
Telsey Advisory Group

The date of this prospectus is , 2021.

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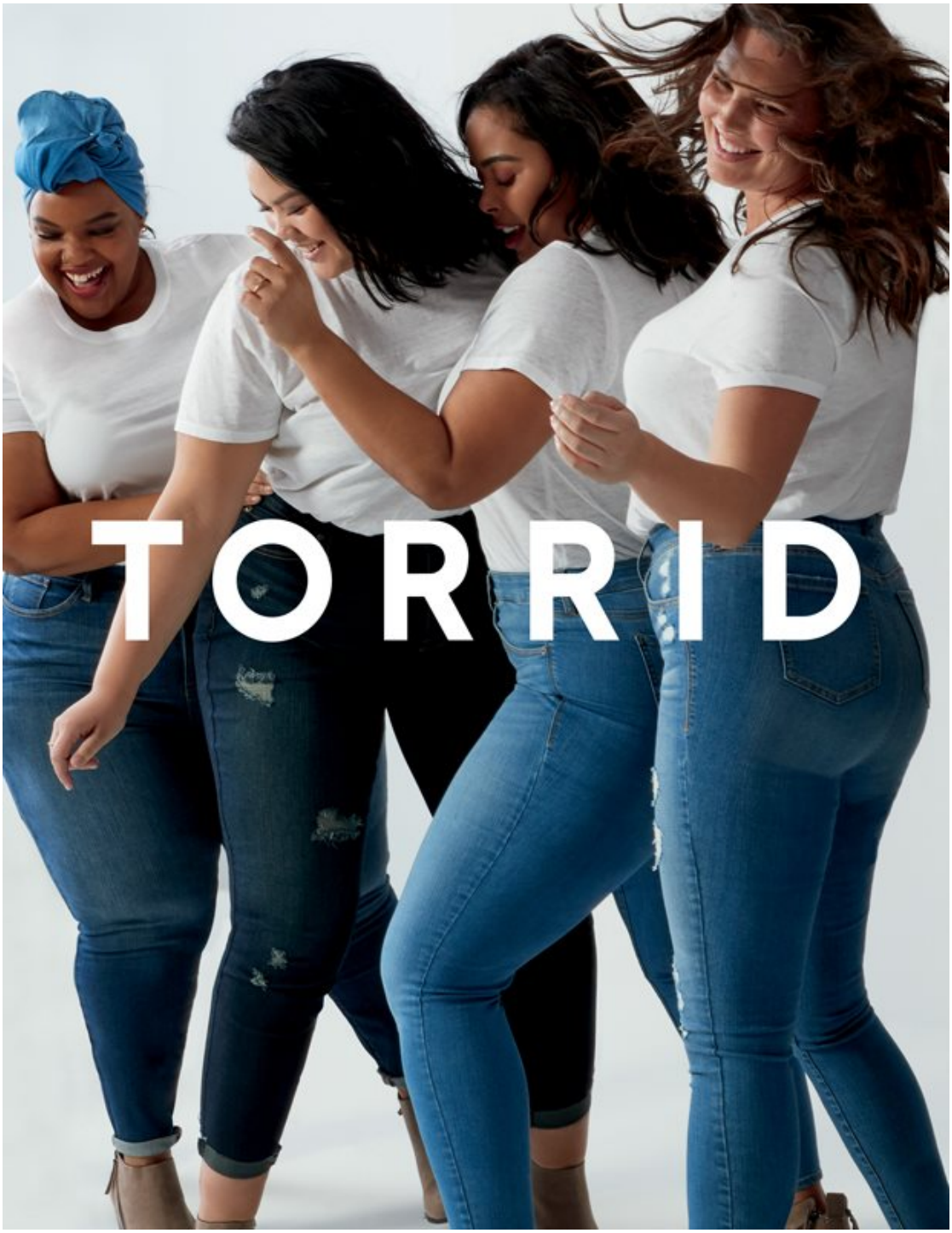

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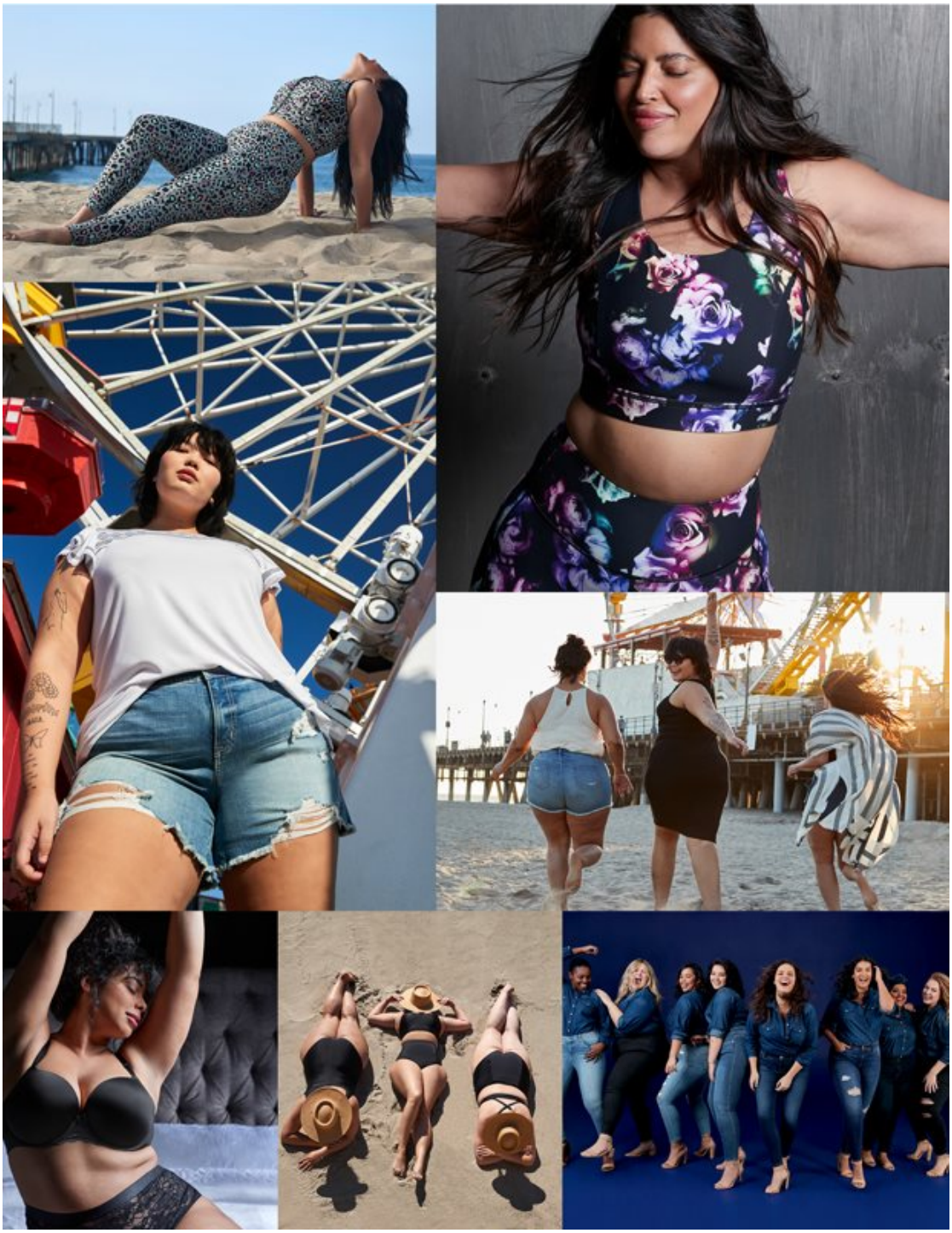

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We have not and the selling stockholders and the underwriters have not authorized anyone to provide you with any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. The selling stockholders are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where such offers and sales are permitted. The information in this prospectus or any free writing prospectus is accurate only as of its date, regardless of its time of delivery or the time of any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: neither we nor the selling stockholders or the underwriters have done anything that would permit our initial public offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our common stock and the distribution of this prospectus outside of the United States.

BASIS OF PRESENTATION

Our fiscal year ends on the Saturday nearest to January 31 and each fiscal year is generally comprised of four 13-week quarters (although in years with 53 weeks, the fourth quarter is comprised of 14 weeks). Fiscal years are identified in this prospectus according to the calendar year in which they begin. For example, references to "2020" or similar references refer to the fiscal year ended January 30, 2021 and references to "calendar year 2020" or similar references to refer to the calendar year ended December 31, 2020.

As used in this prospectus:

- "active customer" means a customer who has completed at least one purchase transaction either in-store or online in the preceding twelve-month period;
- "CAC," or "customer acquisition cost," means marketing expenses, including our marketing organization, digital and performance marketing, direct mail, store and brand marketing, public relations, and photography, partially offset by marketing and promotional funds received from a third party private label credit card partner, divided by the number of customers who placed their first order in the period during which these expenses were incurred;
- "comparable sales" means for a given period the sales of our e-Commerce operations and stores that we have included in our comparable sales base during that period. We include a store in our comparable sales base after it has been open for 15 full fiscal months. If a store is closed during a fiscal year, it is only included in the computation of comparable sales for the full fiscal months in which it was open. The computation of comparable sales includes results from stores that were temporarily closed due to COVID-19. Partial fiscal months are excluded from the computation of comparable sales. We apply current year foreign currency exchange rates to both current year and prior year comparable sales to remove the impact of foreign currency fluctuation and achieve a consistent basis for comparison. Comparable sales allow us to evaluate how our unified commerce business is performing exclusive of the effects of non-comparable sales;
- "contribution profit" means merchandise profit less distribution, shipping and fulfillment expenses, store occupancy, including maintenance, supplies and utilities, store payroll, and other operating expenses, such as credit card processing fees. We include store occupancy and store payroll costs in contribution profit as stores are an integral part of our unified commerce strategy and serve as a vehicle to both acquire and service customers on an ongoing basis;
- "e-Commerce penetration" means net sales generated in the e-Commerce channel, including sales generated from our website, mobile app, and through the buy-online-pickup-in-store and ship from store offerings, divided by total net sales;
- "LTV," or "customer lifetime value," means the cumulative contribution profit attributable to a particular customer cohort;
- "Net Promoter Score," or "NPS," is a commonly used metric to measure consumer satisfaction and loyalty and indicates the percentage of consumers rating their likelihood to recommend a product or service to a friend. The percentage of "detractors," or consumers who respond with a rating of 6 or less, is subtracted from the percentage of "promoters," or consumers who respond with a 9 or 10, to yield NPS. We have calculated NPS for us and a set of 27 peers based on a survey of plus-size consumers we commissioned, using the same methodology for all companies. For purposes of the NPS, we define "peer average" NPS as the average NPS of us and the 27 peers, which include select department stores, mass-retailers, specialty retailers and direct to consumer brands;
- "omni-channel customer" means a customer who has completed at least one purchase transaction in each of our store and e-Commerce channels in a twelve-month period; and
- "store-level contribution" means a particular store's net sales, less product costs and direct operating costs, including payroll, occupancy and other operating costs specifically associated with that store.

Store-level contribution is an assessment of store-level profitability and a supplemental measure of the operating performance of our stores that is neither required by, nor presented in accordance with, accounting principles generally accepted in the United States ("GAAP") and our calculations thereof may not be comparable to those reported by other companies. We present this measure as we believe it is frequently used by securities analysts, investors and other interested parties to evaluate companies in our industry and we use it internally as a benchmark to compare our performance to that of our competitors. This measure has limitations as an analytical tool and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP.

References to the membership of our customer loyalty program, Torrid Rewards (formerly Torrid Insider), refer to the total number of customers that have signed up for Torrid Rewards, and not unsubscribed, over the life of the program; there is no additional requirement for these customers to have been recently or repetitively active as customers of Torrid.

Certain figures in this prospectus have been subject to rounding adjustments. Therefore, figures shown as totals in certain tables may not sum due to rounding.

MARKET AND INDUSTRY DATA

We obtained the industry, market and competitive position data throughout this prospectus from our own internal estimates and research as well as from industry and general publications and research, studies and surveys conducted by third parties. Industry publications, studies and surveys generally state that they have been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third-party sources. While we believe our internal company research is reliable and the definitions of our market and industry are appropriate, neither such research nor these definitions have been verified by any independent source.

TRADEMARKS AND TRADE NAMES

This prospectus includes our trademarks such as "Torrid" and "Torrid Curve" which are protected under applicable intellectual property laws and are the property of Torrid Holdings Inc. or its subsidiaries. This prospectus also contains trademarks, service marks, trade names and copyrights, of other companies, which are the property of their respective owners. Solely for convenience, trademarks and trade names referred to in this prospectus may appear without the ® or TM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks and trade names.

NON-GAAP FINANCIAL MEASURES

Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow are supplemental measures of our operating performance that are neither required by, nor presented in accordance with, GAAP and our calculations thereof may not be comparable to similarly titled measures reported by other companies. Adjusted EBITDA represents GAAP net income (loss) plus interest expense less interest (income), net of other (income) expense, plus provision less (benefit) for income taxes, depreciation and amortization ("EBITDA"), and share-based compensation, non-cash deductions and charges, other expenses and the duplicative and start-up costs associated with the West Jefferson, Ohio, distribution center. Adjusted EBITDA margin represents Adjusted EBITDA as a percentage of our total net sales. Free Cash Flow represents net cash provided by operating activities less capital expenditures. We believe Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow facilitate operating performance comparisons from period to period by isolating the effects of certain items that vary from period to

period without any correlation to ongoing operating performance. We also use Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow as three of the primary methods for planning and forecasting the overall expected performance of our business and for evaluating on a quarterly and annual basis actual results against such expectations. Further, we recognize Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow as commonly used measures in determining business value and, as such, use them internally to report and analyze our results and we additionally use Adjusted EBITDA as a benchmark to determine certain non-equity incentive payments made to executives.

Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow have limitations as analytical tools. These measures are not measurements of our financial performance under GAAP and should not be considered in isolation or as alternatives to or substitutes for net income (loss), income (loss) from operations or any other performance measures determined in accordance with GAAP or as alternatives to cash flows from operating activities as a measure of our liquidity. Our presentation of Adjusted EBITDA and Adjusted EBITDA margin should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

For a reconciliation of net income to Adjusted EBITDA, see “Prospectus Summary—Summary Consolidated Historical Financial and Other Data.”

For a reconciliation of net cash provided by operating activities to Free Cash Flow, see “Selected Historical Financial and Other Data.”

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider in making your investment decision. You should read the following summary together with the entire prospectus, including the more detailed information regarding our Company, the common stock being sold in this offering and our consolidated financial statements and the related notes appearing elsewhere in this prospectus. You should carefully consider, among other things, our consolidated financial statements and the related notes thereto included elsewhere in this prospectus and the matters discussed in the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this prospectus before deciding to invest in our common stock. Some of the statements in this prospectus constitute forward-looking statements. See "Forward-Looking Statements."

Except where the context otherwise requires or where otherwise indicated, the terms "Torrid," "we," "us," "our," "our Company" and "our business" refer, prior to the Reorganization (as defined below), to Torrid Parent Inc. together with its consolidated subsidiaries, and after the Reorganization, to Torrid Holdings Inc. together with its consolidated subsidiaries.

Company Overview

TORRID

Our Mission

Torrid is on a mission to be the best direct-to-consumer apparel and intimates brand in North America by providing an unparalleled fit and experience that empowers curvy women to love the way they look and feel.

Who We Are

Torrid is the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America by net sales. We grew our net sales by 8% CAGR between 2017 and 2020, making us among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market. We served 3.2 million active customers and generated net sales of $974 million in 2020. Our proprietary product offering delivers a superior fit for the curvy woman that makes her love the way she looks and feels. We offer our customer high quality products across a broad assortment that includes tops, denim, dresses, intimates, activewear, footwear and accessories. Our style is unapologetically youthful and sexy. We believe our customer values the appeal and versatility of our curated product assortment that helps her look good for any occasion, including weekend, casual, work and dressy, all at accessible price points. We specifically design for stylish plus-size women and are maniacally focused on fit because fit is the highest priority for them, according to a consumer study we commissioned. Based on the same study, plus-size consumers consistently rank our fit as #1 among our peers, which contributes to our leading net promoter score ("NPS") of 55, nearly two times the peer average score of 30. Our consistent fit contributed to a return rate of only 9% for e-Commerce purchases in 2020, whereas return rates for e-Commerce purchases generally can be as high as 30%, according to Optoro's research. Through our product and brand experience, we connect with customers in a way that other brands, many of which treat plus-size customers as an afterthought, have not.

We are the category-leading brand, by net sales, in the $85 billion U.S. women's plus-size apparel and intimates market, which serves 90 million plus-size women, defined as wearing sizes 10 and up. We design for a

25 to 40 year old curvy woman, who leads a social and active lifestyle and wants to wear clothes that make her look and feel good. While 58% of our 2020 customers are under 40 years old and our average customer is a size 18, our products and style appeal to women of all ages and across the range of plus-sizes. Our target market is large, growing and underserved across both online and in-store channels. The average plus-size woman has historically struggled to find stylish products that fit well and 78% of plus-size women reported that they would spend more on clothing if they had more options available in their size. Through our differentiated product, unified go-to-market strategy, strong connection with our customer and data-driven merchandising approach, we believe we are uniquely positioned to unlock this untapped spend potential by providing her an experience that has not previously been available to her.

We execute a customer-first unified commerce strategy that is channel-agnostic, allowing our customer to experience our brand and unparalleled proprietary fit wherever and whenever she wants. We market directly to consumers via our e-Commerce platform and our physical footprint of 608 stores as of May 1, 2021. E-Commerce sales represented 42% and 48% of net sales in 2018 and 2019, respectively, having grown by 28% in 2018 and 28% in 2019. In 2020, e-Commerce sales represented 70% of net sales as e-Commerce sales grew by 38% and store sales declined as a result of temporary store closures and a slowdown in store traffic associated with the global COVID-19 pandemic. For the twelve months ended May 1, 2021, e-Commerce sales represented 69% of net sales. Our broad digital ecosystem—from our engaging e-Commerce website and mobile app to social media channels and our *Torrid Rewards* loyalty program—allows us to better connect, engage, track and service customers. This ecosystem also provides robust quantitative and qualitative customer data that we use to inform all aspects of our operations, from product development, to merchandising and marketing. Our stores are designed to create an inclusive and welcoming environment where our customers can discover and engage with our brand, experience our fit and connect with a community of like-minded women. Our stores also serve as an effective and profitable source of new customer acquisition with a payback period of less than two years. The integration of e-Commerce and stores is fundamental to our customer-centric strategy as those two channels complement and drive traffic to one another. We have a history of converting single-channel customers into highly valuable omni-channel customers. In 2020, on average, omni-channel customers made 7.8 purchases and spent approximately 3.2 times more than single-channel customers. Our consistent product fit and the unified experience between our stores and e-Commerce platform creates a powerful flywheel effect that results in low customer acquisition cost, high repeat purchasing behavior and high customer lifetime value.

We form long-standing relationships with our customers, who are empowered by their Torrid experience and develop what we believe to be a deep, emotional connection with our brand. We were able to attribute approximately 98% of our net sales in 2020 to individual customers through our extensive customer and sales data resulting from our loyalty program and highly engaged customer base. Our customers' repeat purchasing behavior is evidenced by our strong net sales retention. In 2020, we retained 82% of net sales from the prior year's identifiable customers. While the net sales retention was down from 96% in 2019 due to temporary store closures resulting from the COVID-19 pandemic, we expect net sales retention to recover in future periods. The rich database of information provided by our loyalty program gives us deep insight into the plus-size consumer's purchasing behavior and allows us to market to our customers more effectively. Our stores and efficient marketing spend enable low CAC that, combined with our high repeat purchase behavior, generates an attractive ratio of customer LTV to CAC. For example, the 5-year LTV of our 2015 customer cohort was approximately 7.4 times the cost of acquiring those customers, which is a testament to our ability to efficiently acquire new customers.

We employ a data-driven approach to design, merchandising and inventory planning and allocation to deliver high quality products that combine the fit, style and attitude that our customer wants. As a fit-first company, we do not rely on being fashion leaders and instead provide a curated assortment of Basic, Core and New products. We internally design and develop the vast majority of our products, a model we describe as vertical sourcing, which gives us control to deliver consistent fit, quality and cost across our products. We

leverage our robust customer data to inform purchasing decisions and have the flexibility to respond quickly to the latest sales trends and incorporate customer feedback to deliver the product our customer wants. Further, we utilize a read-and-react testing approach with shallow initial buys to iterate our New product offering, thus minimizing fashion and inventory risk. Our merchandising strategy has enabled us to generate approximately 80% of our net sales from products sold at regular price, which we define as products sold at initial ticket price or with a standard marketing promotion (e.g., "Buy One Get One 50% Off"). We believe our data-driven approach will continue to drive market growth and market share gains with our rapidly growing and underserved customer base.

Response to the COVID-19 Pandemic

Commencing in December 2019, the novel strain of coronavirus, COVID-19, spread rapidly throughout the world. The global crisis resulting from the spread of COVID-19 has disrupted, and continues to significantly disrupt, local, regional and global economies and businesses in the United States and internationally. Because apparel retail stores were generally deemed "non-essential" by most federal, state, provincial and local government authorities in North America, our stores had to remain closed or operate on reduced hours; we estimate that in 2020, our stores were open, on a same-store-basis, 47% fewer operating hours than in 2019. COVID-19 has accelerated the secular shift towards e-Commerce as consumers increasingly shopped online amid the temporary store closures, and we believe we were well positioned to serve our customers through our robust e-Commerce platform and accelerated investments in omni-channel offerings such as curbside pickup, buy-online-pickup-in-store ("BOPIS") and ship from store. In response to the COVID-19 pandemic, Torrid proactively implemented various initiatives with a focus on ensuring the health and safety of employees and customers, minimizing the financial impact of COVID-19 and continuing to build the foundation for future growth and profitability. The initiatives implemented include, but are not limited to:

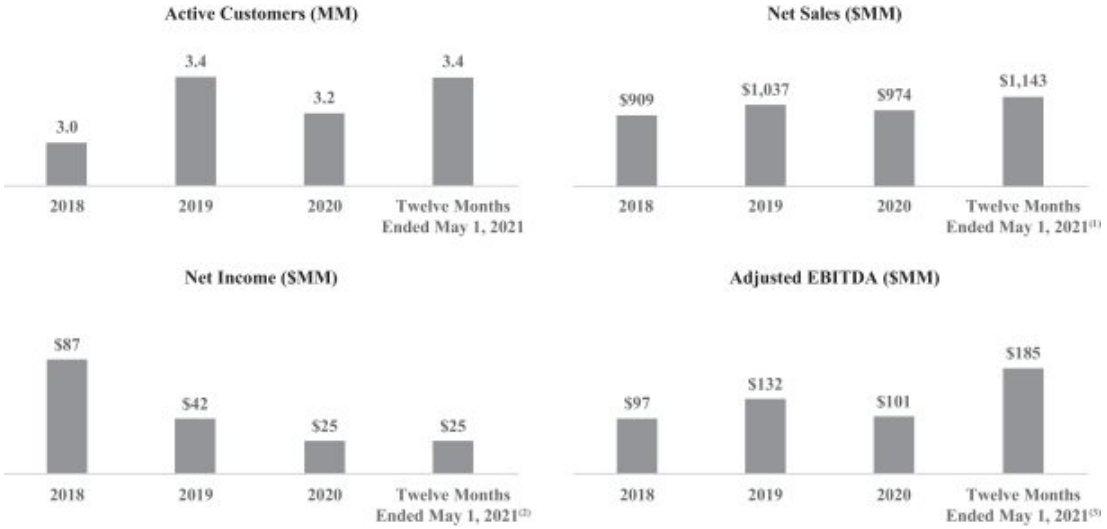
- Accelerated investments in omni-channel offerings and rolled out BOPIS across all U.S. stores in June 2020, and curbside pickup and ship from store in select stores in August 2020;
- Made targeted investments and changes to our process to improve the speed and flexibility of our supply chain including shortening our development cycle by two weeks;
- Leveraged data analytics and insights to tailor marketing and promotional strategies in response to consumer behavior changes related to the ongoing COVID-19 pandemic, allowing us to reduce our CAC by 7% in 2020 from 2019;
- Utilized new technologies to communicate with stores in real time and facilitate virtual store visits for District and Regional Managers;
- Managed expenses by reducing headcount and general and administrative expenses;
- Extended and improved payment terms with vendors and negotiated rent relief, including variable rent leases, for a significant portion of stores; and
- Deferred non-essential capital expenditures and new store opening plans.

Our Financial Performance

We believe our fit-focused product strategy, direct-to-consumer model and passionate team have resulted in high growth and a leading market position over the last several years. We have grown comparable sales for 35 of the last 37 quarters; the only two quarters of decline were in 2020 as a result of the disruption caused by COVID-19. In early 2020, as COVID-19 disrupted our customers' lives, Torrid's business demonstrated resiliency beyond our initial expectations. By May 2020, net sales growth began to rebound even as store traffic remained challenged, as consumers increasingly shifted their spending to online channels. Financial performance

in 2020 demonstrates the strong inherent demand for our differentiated product and the resiliency of our business model. Since 2018, we have recorded the following financial results:

- Total active customers grew 11% year-over-year from 3.0 million in 2018 to 3.4 million in 2019. In 2020, total active customers declined by 5% to 3.2 million, as a number of customers held off on making purchases in 2020. Total active customers grew 6% year-over-year from 3.2 million as of May 2, 2020 to 3.4 million as of May 1, 2021;
- Net sales grew 14% year-over-year from $909 million in 2018 to $1,037 million in 2019. In 2020, net sales declined 6% year-over-year to $974 million as significant declines in store-based sales were partially offset by increases in e-Commerce sales. Nevertheless, we estimate Torrid was able to gain market share in women's plus size apparel and intimates in 2020. Net sales grew 108% from $156 million for the three months ended May 2, 2020 to $326 million for the three months ended May 1, 2021;
- Net income declined 52% year-over-year from $87 million in 2018 to $42 million in 2019. In 2020, net income declined 41% year-over-year to $25 million. Net income grew 5% from $12 million for the three months ended May 2, 2020 to $13 million for the three months ended May 1, 2021; and
- Adjusted EBITDA grew 36% year-over-year from $97 million in 2018 to $132 million in 2019, representing a margin increase of 200bps from 11% to 13% during the same time period. In 2020, Adjusted EBITDA declined 24% year-over-year to $101 million driven by temporarily lower gross profit margin and fixed cost deleverage as a result of the challenges presented by COVID-19. Adjusted EBITDA grew from $(8) million for the three months ended May 2, 2020 to $76 million for the three months ended May 1, 2021. For a reconciliation of net income to Adjusted EBITDA, see "Prospectus Summary—Summary Consolidated Historical Financial and Other Data."



(1) Net Sales for the Twelve Months Ended May 1, 2021 calculated as Net Sales of $325.7 million for the three months ended May 1, 2021, plus Net Sales of $973.5 million for 2020, less Net Sales of $156.5 million for the three months ended May 2, 2020.

(2) Net Income for the Twelve Months Ended May 1, 2021 calculated as Net Income of $12.9 million for the three months ended May 1, 2021, plus Net Income of $24.5 million for 2020, less Net Income of $12.3 million for the three months ended May 2, 2020.

(3) Adjusted EBITDA for the Twelve Months Ended May 1, 2021 calculated as Adjusted EBITDA of $75.7 million for the three months ended May 1, 2021, plus Adjusted EBITDA of $100.8 million for 2020, less Adjusted EBITDA of $(8.2) million for the three months ended May 2, 2020.

As of May 1, 2021, we had $202.0 million of outstanding indebtedness, net of unamortized original issue discount and debt financing costs, consisting of term loans under the Original Term Loan Credit Agreement (as defined herein). On June 14, 2021, we entered into a term loan credit agreement which provided for a new $350.0 million senior secured seven-year term loan facility in an initial aggregate amount of $350.0 million (the "New Term Loan Credit Agreement") and used borrowings thereunder to, among other things, repay and terminate the Original Term Loan Credit Agreement. For a description of our debt service obligations, including mandatory repayments, under the New Term Loan Credit Agreement, see "Description of Certain Indebtedness—New Term Loan Credit Agreement."

Our Industry

We believe we are uniquely positioned to capture outsized share in the highly attractive and growing women's plus-size apparel industry.

Large and Rapidly Growing Addressable Market Comprised of 90 Million Plus-Size U.S. Women

The market for women's plus-size apparel and intimates is large and growing. As of December 31, 2019, more than two-thirds of all U.S. women, or 90 million, were plus-size. According to a third-party study we commissioned, the women's plus-size apparel and intimates market was approximately $85 billion in calendar year 2019, compared to the women's straight size market of approximately $96 billion for the same period, and is expected to grow at a 3%-5% CAGR, more than twice the rate of the overall U.S. women's apparel and intimates market. Further, the number of women in this size range is growing fastest among women under 45 as well as women with higher incomes, according to U.S. government agencies. Based on our 3.4 million active customers as of May 1, 2021, we believe Torrid is less than 4% penetrated among U.S. plus-size women and has a significant opportunity to expand share in this growing market.

Plus Size Women Are Significantly Underserved with Untapped Spend Potential

Plus-size women are underserved with apparel and accessories offerings that are characterized by poor fit, plain styling and limited selection. 69% of plus-size women report that it is difficult to find clothing as stylish and attractive as those available to non-plus-size women. For most apparel brands, plus-size is an afterthought as they do not invest time and resources to optimize fit on real plus-size models but rather simply rely upon "grading-up" existing non-plus-size offerings through extended sizing, which leads to poor, inconsistent quality and fit. Most of the existing dedicated plus-size brands target an older consumer or lack the product design and technical capabilities to deliver the fit she wants. We estimate there is currently only one dedicated women's plus-size apparel store for every 51 women's specialty apparel stores. As a result, there were approximately 78,000 plus-size women for each dedicated women's plus-size apparel store, as compared to approximately 700 women for every other women's specialty apparel store. We believe our superior fit, brand experience and our unified commerce strategy position us well to cater to this underserved market.

Due to the lack of options, the plus-size woman underspends on apparel and intimates annually compared to her non-plus-size peers and 78% of plus-size women reported that they would spend more on clothing if they had more options available in their size. We estimate this underspend to be $19 billion, implying a 22% embedded wallet growth opportunity beyond the $85 billion calendar year 2019 women's plus-size apparel and intimates market, for a total addressable market size of $104 billion. We believe Torrid has a significant opportunity to unlock this additional, untapped spend potential and increase overall market share by better serving plus-size customers.

Significant Growth in Digital and Omni-Channel Shopping

The majority of all apparel purchases in the United States occur in stores. However, consumers have increasingly been shopping for apparel online, a behavior that has meaningfully accelerated during the pandemic.

We believe this consumer behavior will continue for the next several years. According to Torrid's estimates based on eMarketer's Apparel & Footwear 2021 data:

- U.S. online apparel sales were $125 billion in calendar year 2019 and are expected to reach $270 billion in calendar year 2024, growing at a CAGR of 17%; and
- Online penetration in apparel has increased from 20% to 26% in the United States from the end of calendar year 2016 through calendar year 2019. U.S. online penetration in apparel is expected to reach 38% in 2021 and 51% in 2024.

Additionally, digital channels play an important role in consumers' offline purchase decisions. Specifically, when asked about their shopping behaviors prior to making a purchase in a physical retail store, 39% of digital consumers visited a brand's website, 36% read customer reviews and 33% attempted to price match the product online, according to BigCommerce's 2018 Omnichannel Buying Report that is based on a global survey of nearly 3,000 digital consumers. We believe retailers that employ an omni-channel strategy offering both a high-quality experiential brick-and-mortar footprint and a compelling online store supported by a strong digital presence and omni-channel offerings such as curbside pickup, BOPIS and ship from store have a competitive advantage in serving potential customers. We believe our unified commerce strategy, which includes 70% of net sales from e-Commerce in 2020 and robust omni-channel functionality, positions Torrid well to succeed in this evolving environment.

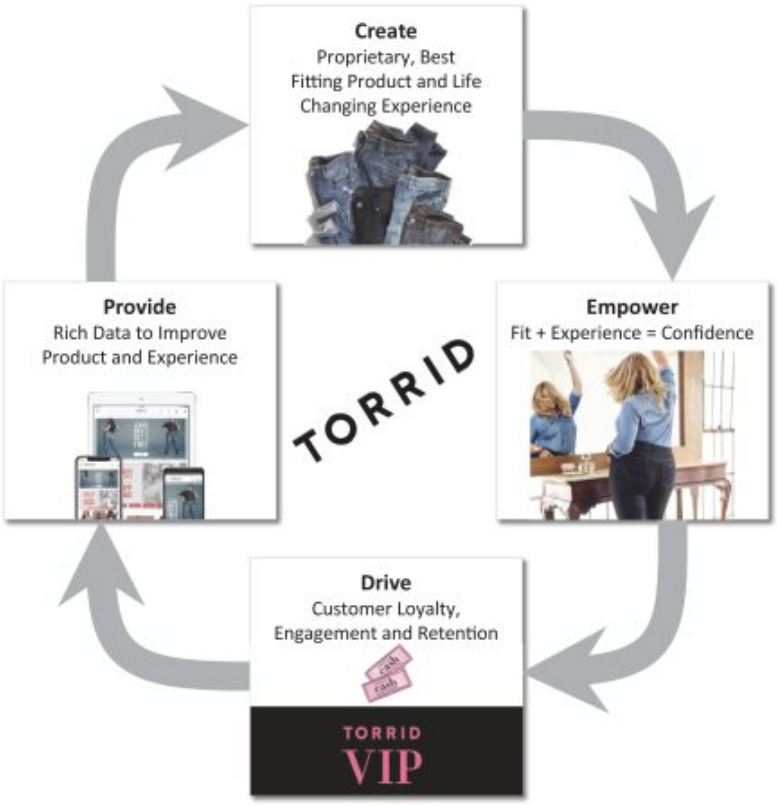
Cultural Tailwinds Driving Torrid's Market

We believe Torrid stands to benefit from thriving cultural movements involving female empowerment, body positivity and socially-influenced purchasing. Growing celebration of femininity, inclusivity and self-identity, along with the emergence of plus-size celebrities and influencers, inspires young curvy customers to demand more flattering and stylish clothing they are proud to wear. At the same time, younger generations are embracing social media platforms, including Instagram, which act as vehicles for community building and discovery. This seamless, constant exchange of community-based inspiration encourages consumers to purchase better-fitting and youthful clothing that allows for unapologetic self-expression. We believe these cultural shifts will continue to support the growth of the women's plus-size apparel market.

The Torrid Approach

To achieve our mission of being the best direct-to-consumer plus-size apparel and intimates brand, we have created a proprietary fit that empowers our customers and drives loyalty. In turn, our loyal customers provide us with a rich set of data that allows us to improve our product and experience, thus creating a virtuous cycle that reinforces our leading position in plus-size apparel and intimates.

A FIT-ENABLED VIRTUOUS CYCLE



FIT TO PERFECTION

- We provide a fit she knew she wanted but never had access to;
- We accomplish this by fitting every single article of clothing we produce on a real woman, tailoring for her special needs, not simply “grading up” non-plus-size apparel;
- We utilize a proprietary sizing process that is constantly updated through data and our continuous customer feedback loop, until we fit to perfection; and
- We deliver unparalleled technical fit combined with unapologetic attitude and style.

Competitive Strengths

We attribute our continued success to the following competitive strengths:

First at Fit. Our capability to deliver the best fit for the curvy woman is unrivaled in the industry and hard to replicate. We have a maniacal focus on fit across our entire organization, which is rooted in our recognition of the importance of fit to our customer. Our team of highly skilled designers, artists and product engineers internally design and develop products that represented approximately 89% of our net sales in 2020. Unlike other brands, we do not rely on mannequins during the fit process, but rather fit all of our products on full-time plus-size fit models, our staff, and often our most loyal customers. We have developed our differentiated technical fit by building and continuously refining a database of fit specifications derived from testing, measuring and cataloging over 13,000 garments each year on our fit models. The discipline and rigor of our fit process differentiates our approach to technical design. We also utilize proprietary fabrics specifically engineered to enhance the fit for the plus-size woman. Our vertical sourcing model gives us control to deliver consistent fit, quality and cost, and allows us to incorporate customer feedback quickly and effectively. Our customers often

start their Torrid journey in fit-critical categories such as denim and intimates that lead to increased loyalty and drive higher LTV over time. In intimates, we leverage our design and engineering expertise to develop highly technical bra features, such as our patent-pending back smoothing technology and recently introduced wire free bra that require significant investment and are not easy to replicate by competitors. We believe our differentiated ability to deliver consistent fit and quality combined with style and comfort represents a significant competitive advantage.

Differentiated, Leading Brand for the Plus-Size Woman. Torrid is the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America by net sales. We grew our net sales by 8% CAGR between 2017 and 2020, making us among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market. We believe many of our customers form a deep emotional connection with our brand, as their discovery of Torrid is often the first time they have felt truly understood and well-served by an apparel company. The Torrid brand represents a distinctive combination of high quality, stylish and well-fitting products combined with a brand experience that makes the plus-size woman feel confident and empowered. Our customers engage with us across multiple channels including online, in-store, through community events, surveys and on social media, with many becoming our biggest brand advocates. Our brand satisfaction is among the highest for apparel brands, as illustrated by our leading NPS of 55, nearly two times the peer average score of 30. We believe this significant brand value will facilitate sustainable net sales growth and market share gains over time.

A Deep Connection to Our Loyal and Passionate Customer. We form long-standing relationships with our customers, who are empowered by their Torrid experience and reward us with their loyalty. In 2020, 2.9 million out of our approximately 3.2 million active customers were members of our loyalty program, accounting for 95% of net sales. Members of the top two tiers of our loyalty program, Torrid VIP and Loyalist, are our most loyal customers who purchase from us more often and spend significantly more than the average customer, accounting for an outsized share of net sales. In 2020, Torrid VIP and Loyalist members accounted for 16% of active customers and 41% of net sales. On average, they purchased more than 9 times per year and spent approximately $750 during the same period. Our customers' repeat purchasing behavior is evidenced by our strong net sales retention. In 2020, we retained 82% of net sales from the prior year's identifiable customers, despite the challenges presented by the COVID-19 pandemic. While the net sales retention was down from 96% in 2019 due to the COVID-19 pandemic, we expect net sales retention to recover in future periods. As a result of our strong customer loyalty and net sales retention, we generate high customer LTV, which we intend to leverage to help drive future growth.

Dynamic Direct-to-Consumer Business Model. Our unified commerce platform provides our customer with an inspiring shopping experience whenever and wherever she chooses to shop with us. We market directly to consumers via our e-Commerce platform, which accounted for 70% of sales in 2020, and our physical footprint of 608 stores as of May 1, 2021. Our broad digital ecosystem—from our engaging e-Commerce website and mobile app to social media channels and our *Torrid Rewards* loyalty program—allows us to better connect, engage, track and service customers. This ecosystem also provides robust quantitative and qualitative customer data that we use to inform all aspects of our operations, from product development, to merchandising and marketing. E-Commerce sales represented 42% and 48% of net sales in 2018 and 2019, respectively, having grown by 28% in 2018 and 28% in 2019. In 2020, e-Commerce sales represented 70% of net sales as e-Commerce sales grew by 38% and store sales declined as a result of temporary store closures and a slowdown in store traffic associated with the global COVID-19 pandemic. For the twelve months ended May 1, 2021, e-Commerce sales represented 69% of net sales. Our stores are designed to deliver an immersive brand and fit discovery experience further supported by personal connection with store associates who act as brand ambassadors. Our stores also act as a low cost source of new customer acquisition, requiring a small upfront investment that is quickly paid back. Our e-Commerce platform and store base complement and drive traffic to one another. Once she discovers her size in store, she increasingly shops online with us as she knows she can rely

on the consistency of our fit. Our consistent product fit and the unified experience between our stores and e-Commerce platform creates a powerful flywheel effect that results in low CAC, high repeat purchasing behavior and high customer LTV.

Data-Driven, Low-Risk Merchandising Model. We employ a data-driven approach to design, merchandising and inventory planning and allocation to deliver high quality products that combine the fit, style and attitude that our customer wants. We have excellent visibility into our customer's preferences through her purchase history and our outsized share of her apparel wallet. We leverage this robust customer data along with market trends to inform all purchasing decisions. Through our vertical sourcing model, we have the flexibility to respond quickly to the latest sales trends and make adjustments to our current offering based on customer feedback to deliver product our customer wants. We focus on fit, not fashion, and do not rely on being a fashion leader. We have a low-risk assortment that is anchored by our recurring, fit-focused offering of Basics and Core styles, which together represented approximately 86% of net sales in 2020. New product, which represents new or emerging styles, accounted for the remaining approximately 14% of net sales in 2020. We utilize a read-and-react testing approach with shallow initial buys and data-driven repurchasing decisions to iterate our New product offering, thus minimizing fashion and inventory risk.

Proven, Experienced Management Team and Mission-Driven Culture. We have created a company culture focused on attracting, training, retaining and developing talent that does not settle for the low expectations historically associated with the women's plus-size apparel market. Approximately 93% of our employees identify as female. Our organization is comprised primarily of women who are also customers and align with our goal to empower curvy women to love the way they look and feel. In addition, they embody our philosophy and dedication to our product and serve as brand ambassadors on a daily basis. Our team is led by our Chief Executive Officer, Liz Muñoz, who is a direct-to-consumer brand veteran and joined the Company in January 2010 after having served as the President of Lucky Brand. Liz has a strong background in product fit and design, having spent years fitting clothing, and later leading the design and merchandising efforts at both Lucky Brand and Torrid. We employ a highly talented team of 446 corporate employees, comprised of skilled and experienced apparel and direct-to-consumer executives, combined with artists, designers, merchants, product engineers and data analysts.

Growth Strategies

We believe we have a significant opportunity to increase market share in the massive and growing plus size apparel and intimates markets. We intend to continue driving growth in our business through the following strategies:

Grow Torrid Curve

We plan to accelerate growth of Torrid Curve®, our line of bras and other intimates, activewear, loungewear and sleepwear tailored specifically to a plus-size customer, through targeted investments in marketing and product innovation. The same discipline and rigor of our fit process for apparel is applied when designing and developing our Torrid Curve products. In intimates, we leverage our design and engineering expertise to develop highly technical bra features, such as our patent-pending back smoothing technology and recently introduced wire free bra that require significant investment and are not easily replicated by competitors. Our deep connection with our customer has guided our product development pipeline so that we build products she needs and wants. For example, the idea for our back smoothing technology came from direct feedback from customers who expressed their desire for a solution to address her specific needs. We leverage this community to test our new products and perfect their development before launch. According to our estimates, the intimates market is growing at a rate of 8% which is 3 percentage points higher than the growth of the women's plus-size apparel market, according to Statista. Our customers' sizes are often not sold by leading intimates brands and we believe

existing product options fail to combine functionality with appealing design. Intimates is a fast-growing category with significant incremental penetration opportunity both within our existing Torrid customer base and with new customers. Bras help attract customers to our brand; bras are, behind tops, the second most frequent item in a new customer's first purchase. For 2019 and 2020, on average, customers who have bought Torrid Curve products spent 3x more than someone who did not and their retention rates were 1.5x higher. We believe Torrid Curve will be a meaningful driver of our growth in the future.

Attract New Customers to Torrid

We believe there is a clear path to further increasing brand awareness and acquiring new customers through an integrated digital marketing and strategic store expansion strategy.

- *Increase Brand Awareness and Accelerate Customer Acquisition Across Channels*. We intend to grow our brand awareness among plus-size women from approximately 31% as of April 2021, by making incremental investments in our marketing spend, which was only approximately 5.3% of net sales in 2020. We believe we can do so profitably given our high ratio of LTV to CAC. We expect to further drive brand awareness, engagement and conversion through targeted investments in performance and brand marketing, including paid search, retargeting, social media campaigns, plus-size community-based events, in-store experiences and product collaborations.
- *Grow With Disciplined Store Expansion*. We believe the plus-size woman is dramatically underserved in her choice of apparel and intimates offerings and as a result we plan to capitalize on the opportunity to selectively grow our store footprint. Based on our proven, profitable store model, we intend to continue to capture this underpenetrated market with a disciplined roll-out of new stores that drive both in-store and e-Commerce sales. Our stores generate a high level of positive contribution and act as a low cost source of new customer acquisition, requiring a small upfront investment of capital expenditures and pre-opening expenses that is quickly paid back as a result of our customers' high repeat purchasing behavior across channels. We target payback periods of less than two years, in line with our historical openings.

Deepen Customer Relationships to Increase Wallet Share

We intend to continue to leverage the strength of our customer relationships and data, which allowed us to attribute approximately 98% of net sales in 2020 to individual customers. This robust customer data allows us to better engage with customers, increase retention and drive spend per customer.

- *Expand Assortment Based on Trusted Fit*. We intend to leverage data and our customer's trust in our proprietary fit and style to enhance core entry points, such as denim and intimates, and broaden and deepen our offering in nascent categories, including activewear, workwear, special occasion and footwear.
- *Leverage Our Data*. We plan to further deepen customer relationships with personalization, customization and clienteling across channels in ways that we are not currently doing today. Leveraging loyalty program data, we seek to tailor our marketing messages, promotions and product recommendations to her preferences, which we believe will further drive conversion online and in stores and increase our share of her wallet.
- *Grow Loyalty Program Engagement*. As of May 1, 2021, 90% of our active customers are members of our loyalty program and we intend to continuously find new ways to engage her and bring her back to our site, such as increased personalization, dedicated loyalty member events, and opportunities for accelerated tier migration, which we believe will deepen her loyalty and continue to drive recurring purchasing behavior.

- *Enhance Customer Experience*. We believe near-term initiatives, both online and in-store, will greatly enhance the ease of transaction and overall experience for customers. We are upgrading the functionality and features of our mobile app to deliver enhanced personalization such as size recommendations and complementary items, to expedite purchase decisions and increase order value. Further, we have accelerated our investments in and will continue to invest in omni-channel offerings such as curbside pickup, BOPIS and ship from store to drive both customer acquisition and retention.
- *Implement New Technology*. We have continued to enhance e-Commerce functionality with tools for product recommendations, enhanced payment options (e.g., buy now pay later), and improved returns process to drive conversion and increase order value. We also believe there is opportunity to further leverage artificial intelligence and machine-learning tools to drive better customer segmentation, leading to more efficient customer acquisition and retention marketing.

Expand Operating Margins by Leveraging Completed Investments in Data and Multidisciplinary Teams

We have created a highly scalable foundation for growth through significant infrastructure investments. We will continue to strategically invest in our business while driving operational excellence and leveraging our fixed cost base to grow profitability.

- *Leverage Data to Improve Pricing and Promotion Strategy*. In addition to our robust merchandising team, we plan to continue to leverage data across the organization in various ways, allowing us to optimize pricing and promotional activity, including personalized promotions, to drive increased purchases and higher merchandise margins.
- *Enhance Supply Chain Flexibility*. We have developed internal processes that we refer to as our "speed model," including pre-positioning fabrics with our third-party factory partners to accelerate product replenishment cycles, improve inventory turnover and drive higher margin sales.
- *Leverage Cost Base*. We believe our scalable infrastructure and team will yield increasing operational leverage as our sales continue to grow relative to our cost base.

Recent Developments

New Senior Credit Facilities and Special Cash Distribution

On June 14, 2021, we entered into (i) the New Term Loan Credit Agreement and (ii) an amendment to the existing senior secured five-year revolving credit facility to, among other things, (A) increase the facility amount to $150.0 million and (B) extend the maturity to five years from the effective date (the "Amended ABL Facility" and, together with the New Term Loan Credit Agreement, the "New Senior Credit Facilities"). We used borrowings under the New Term Loan Credit Agreement to (i) repay and terminate the Original Term Loan Credit Agreement, (ii) partially fund a special cash distribution in an aggregate amount of $300.0 million (the "Special Cash Distribution") to the direct and indirect holders of our equity interests, consisting of funds managed by Sycamore and members of our former and current management and (iii) pay transaction expenses. The Special Cash Distribution was funded with $131.7 million of borrowings under the New Term Loan Credit Agreement and $168.3 million of our existing cash and cash equivalents. We intend to use the Amended ABL Facility to finance the working capital needs and other general corporate purposes of the Company. For a description of the New Senior Credit Facilities see "Description of Certain Indebtedness."

Summary of Risk Factors

We are subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition or results of operations. You should carefully consider these risks, including the risks discussed in the section entitled "Risk Factors," before investing in our common stock. Risks relating to our business include, among others:

- our operations and financial performance have been affected by, and may continue to be affected by, the COVID-19 pandemic;
- our business is sensitive to consumer spending and general economic conditions, and an economic slowdown could adversely affect our financial performance;
- our business is dependent upon our ability to identify and respond to changes in customer preferences and other related factors;
- our business depends in part on a strong brand image;
- damage to our reputation arising from our use of social media, email and text messages;
- our reliance on third parties to drive traffic to our website;
- we could face increased competition from other brands that could adversely affect our ability to generate higher net sales and margins, as well as our ability to obtain access to digital marketing channels or favorable store locations;
- our ability to attract customers to our physical stores that are located in shopping centers depends on the success of these shopping centers;
- if we are unable to successfully adapt to consumer shopping preferences and develop and maintain a relevant and reliable omni-channel experience for our customers, our financial performance and brand image could be adversely affected;
- risks related to our dependence on third parties for manufacturing and other services;
- the potential of the interruption of the flow of merchandise from international manufacturers to disrupt our supply chain, including as a result of the imposition of additional duties, tariffs and other charges on imports and exports;
- we could fail to effectively utilize information systems and implement new technologies, experience unauthorized disclosure of sensitive or confidential information, whether through a breach of our computer system or otherwise, or fail to comply with federal and state laws and regulations and industry standards relating to privacy, data protection, advertising and consumer protection;
- changes in tax laws or regulations or in our operations may impact our effective tax rate;
- government or consumer concerns about product safety;
- our ability to protect our trademarks and other intellectual property rights;
- the effects of our indebtedness and lease obligations on our financial flexibility and competitive position;
- our ability to design, implement and maintain effective internal controls; and
- our status as a "controlled company" and ability to rely on exemptions from certain corporate governance requirements.

Our Principal Stockholder

Sycamore Partners Management, L.P. is a private equity firm based in New York specializing in retail, distribution, and consumer investments. The firm has approximately $10.0 billion in aggregate committed capital. Sycamore's strategy is to partner with management teams to improve the operating profitability and strategic value of their businesses. Sycamore's investment portfolio includes Azamara, Belk, CommerceHub, Express, Hot Topic, LOFT / Ann Taylor, Lane Bryant, MGF Sourcing, NBG Home, Pure Fishing, Staples, Inc., Staples United States Retail, Staples Canada, Talbots, The Limited and Torrid.

Following this offering, Sycamore will control approximately 78.5% of the voting power of our outstanding common stock (or 77.6% if the underwriters exercise their option to purchase additional shares from the selling stockholders). As a result, Sycamore will control any action requiring the general approval of our stockholders, including the election of our board of directors, the adoption of amendments to our certificate of incorporation and bylaws and the approval of any merger or sale of all or substantially all of our assets. Because Sycamore will hold more than 50% of the voting power of our outstanding common stock, we will be a "controlled company" under the corporate governance rules for NYSE-listed companies. We will therefore be permitted to, and we intend to, elect not to comply with certain corporate governance requirements. See "Management—Corporate Governance—Board Composition; Director Independence; Controlled Company Exemption."

Implications of Being An Emerging Growth Company

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act (the "JOBS Act"), enacted in April 2012. As an "emerging growth company," we may take advantage of specified reduced reporting and other requirements that are otherwise applicable to public companies. These provisions include, among other things:

- exemption from the auditor attestation requirement in the assessment of our internal controls over financial reporting;
- exemption from new or revised financial accounting standards applicable to public companies until such standards are also applicable to private companies;
- exemption from compliance with any requirement that may be adopted by the Public Company Accounting Oversight Board or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- an exemption from the requirement to seek non-binding advisory votes on executive compensation and golden parachute arrangements; and
- reduced disclosure about executive compensation arrangements.

We may take advantage of these provisions until the end of the fiscal year following the fifth anniversary of our initial public offering ("IPO") or such earlier time that we are no longer an "emerging growth company." We will cease to be an "emerging growth company" upon the earliest of: (i) the last day of the fiscal year (A) in which we had more than $1.07 billion in "total annual gross revenues," (B) we are deemed to be a "large accelerated filer" under the rules of the SEC, or (C) following the fifth anniversary of the date of the completion of this offering; and (ii) the date on which we issue more than $1.0 billion of non-convertible debt over a three-year period. We may choose to take advantage of some, but not all, of these reduced burdens. For example, we have taken advantage of the reduced reporting requirement with respect to disclosure regarding our executive compensation arrangements and expect to take advantage of the exemption from auditor attestation on the effectiveness of our internal control over financial reporting. For as long as we take advantage of the reduced reporting obligations, the information that we provide stockholders may be different from information provided

by other public companies. We are irrevocably electing to "opt out" of the extended transition period relating to the exemption from new or revised financial accounting standards and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-"emerging growth companies."

Reorganization

Prior to the completion of this offering, (i) our direct parent, Torrid Holding LLC, will contribute to Torrid all outstanding shares of stock of Torrid Parent Inc., the current parent company of our operating subsidiaries, and (ii) Torrid will assume the obligations of Torrid Holding LLC under the related party promissory notes due to Torrid, which will result in the legal cancellation of such notes but will have no impact on our capitalization (together, the "Reorganization").

Corporate Information

Torrid Holdings Inc., the issuer of the common stock in this offering, is a Delaware corporation. Our corporate headquarters is located at 18501 East San Jose Avenue, City of Industry, California 91748. Our telephone number is (626) 667-1002. Our website address is www.torrid.com. The information contained in or connected to our website is not deemed to be part of this prospectus.

The Offering

Issuer in this offering	Torrid Holdings Inc.
Common stock offered by the selling stockholders	8,000,000 shares. 9,200,000 shares if the underwriters exercise their option to purchase additional shares in full.
Common stock to be outstanding immediately after this offering	110,000,000 shares.
Use of proceeds	We will not receive any proceeds from the sale of shares by the selling stockholders. See "Use of Proceeds."
Controlled company	Upon completion of this offering, Sycamore will continue to beneficially own more than 50% of our outstanding common stock. As a result, we are eligible to, and we intend to, avail ourselves of the "controlled company" exemptions under the rules of the NYSE, including exemptions from certain of the corporate governance listing requirements. See "Management—Corporate Governance—Board Composition; Director Independence; Controlled Company Exemption."
Voting rights	Holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of our stockholders.
Dividend policy	We currently expect to retain all available funds and any future earnings to fund the development and growth of our business and to repay indebtedness and therefore we do not anticipate paying any cash dividends in the foreseeable future. Our ability to pay dividends on our common stock is limited by the New Term Loan Credit Agreement and the credit agreement governing the Amended ABL Facility, and may be further restricted by the terms of any of our future indebtedness. See "Dividend Policy."
Risk factors	Investing in our common stock involves a high degree of risk. See "Risk Factors" elsewhere in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.
Proposed symbol for listing and trading on NYSE	"CURV."

Unless otherwise indicated, all information in this prospectus relating to the number of shares of our common stock to be outstanding immediately after this offering:

- excludes 8,550,000 shares of common stock reserved for future grants under the LTIP (as defined herein), which we plan to adopt in connection with this offering, as well as any shares of common stock that become available pursuant to provisions in the LTIP that automatically increase the share reserve under the LTIP. See "Executive Compensation—Long-Term Incentive Awards—Long-Term Incentive Plan";

- excludes 3,650,000 additional shares of common stock reserved for future issuance under the ESPP (as defined herein), as well as any shares of common stock that become available pursuant to provisions in the ESPP that automatically increase the share reserve under the ESPP. see "Executive Compensation—Long-Term Incentive Awards—Employee Stock Purchase Plan";
- gives effect to a 110,000-for-1 split of Torrid Holdings Inc.'s common stock, which was effected on June 22, 2021 (the "Stock Split"); and
- assumes (1) no exercise by the underwriters of their option to purchase up to 1,200,000 additional shares from the selling stockholders, (2) an assumed initial public offering price of $19.50 per share, the midpoint of the initial public offering price range indicated on the cover of this prospectus, and (3) the completion of the Reorganization.

Summary Consolidated Historical Financial and Other Data

The following tables present our summary consolidated financial and other data as of and for the periods indicated. We have derived the summary consolidated statements of operations and cash flows data for the fiscal years ended February 2, 2019, February 1, 2020 and January 30, 2021 from our audited consolidated financial statements for such periods included elsewhere in this prospectus. Our summary consolidated balance sheet data as of February 1, 2020 and January 30, 2021 have been derived from our audited consolidated financial statements for such periods included elsewhere in this prospectus.

We have derived the summary consolidated statements of operations and cash flows data for the three months ended May 2, 2020 and May 1, 2021 from our unaudited condensed consolidated financial statements included elsewhere in this prospectus. Our summary consolidated balance sheet data as of May 1, 2021 has been derived from our unaudited condensed consolidated financial statements for such period included elsewhere in this prospectus. The unaudited consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal and recurring adjustments, necessary for a fair statement of the information set forth herein. Interim financial results are not necessarily indicative of results for the full year or any future reporting period.

The summary consolidated historical financial and other data presented below should be read in conjunction with our consolidated financial statements and the related notes thereto, included elsewhere in this prospectus, and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our summary consolidated historical financial and other data may not be indicative of our future performance.

	Fiscal Year Ended			Three Months Ended	
	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
	(dollars in thousands, except where noted)				
Statements of Operations Data:					
Net sales	$ 909,147	$1,036,984	$ 973,514	$ 156,477	$ 325,747
Cost of goods sold	586,121	640,909	643,215	115,535	180,815
Gross profit	323,026	396,075	330,299	40,942	144,932
Selling, general and administrative expenses	170,530	253,378	222,093	6,858	109,913
Marketing expenses	48,774	65,704	51,382	14,036	9,525
Income from operations(1)	103,722	76,993	56,824	20,048	25,494
Interest expense	1,053	16,493	21,338	6,094	4,624
Interest income, net of other (income) expense	(85)	(202)	(42)	133	(109)
Income before provision for income taxes	102,754	60,702	35,528	13,821	20,979
Provision for income taxes	16,042	18,833	10,991	1,552	8,054
Net income	$ 86,712	$ 41,869	$ 24,537	$ 12,269	$ 12,925
Net Earnings Per Share(2):					
Basic and diluted	$ 87	$ 42	$ 25	$ 12	$ 13
Weighted Average Number of Shares(2):					
Basic and diluted (#)	1,000	1,000	1,000	1,000	1,000

	Fiscal Year Ended			Three Months Ended	
	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
	(dollars in thousands, except where noted)				
Statement of Cash Flows Data:					
Operating activities	$ 115,092	$ 99,090	$ 151,821	$ 7,192	$ 73,834
Investing activities	(40,507)	(56,120)	(11,570)	(6,076)	(2,786)
Financing activities	(72,841)	(23,335)	(45,925)	48,050	(3,250)
Other Financial and Operating Data:					
Adjusted EBITDA(3)	$ 96,985	$131,999	$ 100,802	$ (8,198)	$ 75,711
Adjusted EBITDA margin(3)	11%	13%	10%	(5%)	23%
Comparable sales	10%	13%	(7%)	(38%)	108%
Active customers (# in millions)	3.0	3.4	3.2	3.2	3.4
Store count (#)	577	607	608	607	608

	As of		
	February 1, 2020	January 30, 2021	May 1, 2021
	(dollars in thousands)		
Balance Sheet Data:			
Cash and cash equivalents	$ 28,804	$ 122,953	$190,782
Total current assets	164,013	242,143	319,974
Total current liabilities	186,583	261,109	285,739
Total long-term debt	240,393	193,406	190,530
Total liabilities and stockholder's deficit	635,988	648,209	711,117

(1) The results of operations were impacted by share-based compensation expense related to revaluing our liability-classified incentive units.

(2) Represents net earnings per share, basic and diluted, and weighted-average number of outstanding shares of Torrid Parent Inc. Does not give effect to the Reorganization.

(3) Adjusted EBITDA and Adjusted EBITDA margin are supplemental measures of our operating performance that are neither required by, nor presented in accordance with, GAAP and our calculations thereof may not be comparable to similarly titled measures reported by other companies. Adjusted EBITDA represents GAAP net income (loss) plus interest expenses less interest (income), net of other (income) expense, plus provision less (benefit) for income taxes, depreciation and amortization (also known as "EBITDA"), and share-based compensation, non-cash deductions and charges, other expenses and the duplicative and start-up costs associated with the West Jefferson, Ohio, distribution center. Adjusted EBITDA margin represents Adjusted EBITDA as a percentage of our total net sales. We believe Adjusted EBITDA and Adjusted EBITDA margin facilitate operating performance comparisons from period to period by isolating the effects of certain items that vary from period to period without any correlation to ongoing operating performance. We also use Adjusted EBITDA and Adjusted EBITDA margin as two of the primary methods for planning and forecasting the overall expected performance of our business and for evaluating on a quarterly and annual basis actual results against such expectations. Further, we recognize Adjusted EBITDA and Adjusted EBITDA margin as commonly used measures in determining business value and, as such, use them internally to report and analyze our results and we additionally use Adjusted EBITDA as a benchmark to determine certain non-equity incentive payments made to executives. These measures have limitations as analytical tools and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP.

Adjusted EBITDA and Adjusted EBITDA margin have limitations as analytical tools. These measures are not measurements of our financial performance under GAAP and should not be considered in isolation or as alternatives to or substitutes for net income (loss), income (loss) from operations or any other performance measures determined in accordance with GAAP or as alternatives to cash flows from operating activities as a measure of our liquidity. Our presentation of Adjusted EBITDA and Adjusted EBITDA margin should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

The following table provides a reconciliation of net income to Adjusted EBITDA for the periods presented:

	Fiscal Year Ended			Three Months Ended	
	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
	(dollars in thousands)				
Net income	$ 86,712	$ 41,869	$ 24,537	$ 12,269	$12,925
Interest expense	1,053	16,493	21,338	6,094	4,624
Interest income, net of other (income) expense	(85)	(202)	(42)	133	(109)
Provision for income taxes	16,042	18,833	10,991	1,552	8,054
Depreciation and amortization(A)	26,845	30,208	33,072	8,375	8,569
Share-based compensation(B)	(38,308)	11,993	7,791	(38,515)	39,779
Non-cash deductions and charges(C)	2,466	4,435	1,984	896	35
Other expenses(D)	89	2,510	1,131	998	1,834
Ohio Distribution Center costs(E)	2,171	5,860	—	—	—
Adjusted EBITDA	$ 96,985	$ 131,999	$ 100,802	$ (8,198)	$75,711

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount that are reflected in interest expense and other, net.

(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.

(C) Non-cash deductions and charges includes (i) losses on property and equipment disposals, (ii) non-cash asset impairment charges in 2018 and (iii) the net impact of non-cash rent expense.

(D) Other expenses represent non-routine expenses, including (i) IPO-related transaction fees and (ii) certain expenses related to store closures in 2018; and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.

(E) Represents the duplicative and start-up costs associated with the West Jefferson, Ohio distribution center leased in 2018. This isolates the effect of incurring costs related to the West Jefferson, Ohio distribution center, which was not yet fully operational in 2019, while also incurring distribution and e-Commerce fulfillment costs charged to us by Hot Topic Inc. (“Hot Topic”) under the various service agreements.

RISK FACTORS

This offering and an investment in our common stock involve a high degree of risk. You should carefully consider the risks described below, together with the financial and other information contained in this prospectus, before you decide to purchase shares of our common stock. If any of the following risks actually occurs, our business, financial condition, results of operations, cash flow and prospects could be materially and adversely affected. As a result, the trading price of our common stock could decline and you could lose all or part of your investment in our common stock.

Risks Related to Our Business

Our operations and financial performance has been affected by, and may continue to be affected by, the COVID-19 pandemic.

The spread of COVID-19 has disrupted, and continues to significantly disrupt, local, regional, and global economies and businesses in the countries in which we operate, as well as adversely affected workforces, customers, consumer sentiment, economies and financial markets, and has impacted our financial results. We have had to close stores, limit store hours, limit the number of people in store and follow strict sanitation and social distancing measures to comply with government restrictions. We also temporarily closed our headquarters, required our employees and contractors to work remotely, and implemented travel restrictions. The operations of our suppliers, manufactures and customers have likewise been altered.

Since apparel retail stores were generally deemed "non-essential" by most federal, state, provincial and local government authorities in North America, all of our stores had to remain closed for 58 days in 2020, with more than 50% of the fleet closed for 81 days. Additionally, all of our stores were affected by capacity restrictions and reduced hours of operation for the balance of 2020. Stores in more restrictive states, such as California, experienced extended periods of complete closure and opened only for curbside services for most of the third and fourth fiscal quarters. Even when our stores opened, we experienced reduced customer traffic and net sales volume due to changes in consumer behavior as individuals decreased discretionary retail spending and practiced social distancing and other behavioral changes mandated by governmental authorities or independently undertaken out of an abundance of caution. In many of the states in which we operate, the COVID-19 pandemic has resulted in an acute economic downturn and significantly increased unemployment. A sustained decline in the sales and operating results of our omni-channel sales as a result of the ongoing COVID-19 pandemic, the acute economic downturn resulting therefrom or continued weak economic conditions could, in turn, materially and adversely affect the profitability of our operations.

The COVID-19 outbreak has the potential to cause a disruption in our supply chain and may adversely impact economic conditions in North America, Europe, China and elsewhere. These and other disruptions, as well as poor economic conditions generally, may lead to a decline in the sales and operating results of our omni-channel sales. In addition, the continuation of the global outbreak of coronavirus may adversely affect the economies and financial markets of many countries and could result in a sustained reduction in the demand for our products. A decline in the sales and operating results of our products could in turn materially and adversely affect our ability to pursue our growth strategy. Each of these results would reduce our future sales and profit margins, which in turn could materially and adversely affect our business and results of operations.

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

The extent to which the COVID-19 pandemic impacts us will depend on future developments, including the duration, spread and severity of the pandemic, the extent of additional outbreaks, the effectiveness or duration of

measures, including vaccination efforts, intended to contain or mitigate the spread of COVID-19 or prevent future outbreaks, and the effect of these developments on overall demand in the retail sector, all of which are highly uncertain and difficult to accurately predict.

To the extent the COVID-19 pandemic adversely affects our business, financial condition, results of operations, cash flows and prospects, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section, such as those relating to our level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

Our business is sensitive to consumer spending and general economic conditions, and an economic slowdown could adversely affect our financial performance.

Consumer purchases of discretionary items, including our products, generally decline during recessionary periods and other periods where disposable income is adversely affected. Our performance is subject to factors that affect domestic and worldwide economic conditions, particularly those that affect our target demographic. These factors may include unemployment rates, levels of consumer and student debt, the availability of consumer credit, healthcare costs, reductions in net worth, residential real estate and mortgage markets, taxation, fuel and energy prices, interest rates, consumer confidence, the value of the United States dollar versus foreign currencies and other macroeconomic factors, such as the economic disruption caused by the COVID-19 pandemic. Deterioration in economic conditions or increasing unemployment levels may reduce the level of consumer spending and inhibit consumers' use of credit, which may adversely affect our net sales and profits. In recessionary periods, we may have to increase the number of promotional sales or otherwise dispose of inventory for which we have previously paid to manufacture, which could adversely affect our profitability in those periods. Weakened economic conditions and a slowdown in the economy could also adversely affect shopping center traffic and new shopping center development, which could materially adversely affect us, even though we are a destination for our customers.

In addition, a weakened economic environment or recessionary period may exacerbate some of the risks noted below, including consumer demand, strain on available resources, store growth, decreases in mall traffic, brand reputation, our ability to develop and maintain a reliable omni-channel customer experience, our ability to execute our growth initiatives, interruption of the production and flow of merchandise from key vendors, foreign exchange rate fluctuations and leasing substantial amounts of space. The same risks could be exacerbated individually or collectively.

Our business is dependent upon our ability to identify and respond to changes in customer preferences and other related factors. Our inability to identify or respond to these new trends may lead to inventory markdowns and write-offs, which could adversely affect our business and our brand image.

Our target market of 25 to 40 year old plus-size women has stylistic preferences that cannot be predicted with certainty and are subject to change. Our success depends in large part upon our ability to effectively identify and respond to changing product trends and consumer demands among this segment, and to translate market trends into appropriate, salable product offerings. Our failure to identify and react appropriately to new and changing product trends or tastes, to accurately forecast demand for certain product offerings or an overall decrease in the demand for plus-size products could lead to, among other things, excess or insufficient amounts of inventory, markdowns and write-offs, which could materially adversely affect our business and our brand image. Because our success depends significantly on our brand image among our target segment, damage to our brand image as a result of our failure to identify and respond to changing product trends could have a material negative impact on our business. Additionally, as a direct-to-consumer brand focusing on young, plus-size women, we may not effectively identify product trends that appeal to our target segment or successfully adapt product trends prevailing in the market more broadly to this target segment. While we believe we have a flexible supply chain, we often enter into agreements for the manufacture and purchase of merchandise well ahead of the

season in which that merchandise will be sold. Therefore we are vulnerable to changes in consumer preference and demand between the time we design and order our merchandise and the season in which this merchandise will be sold. Inventory levels for certain merchandise styles may exceed planned levels, leading to higher markdowns to sell through excess inventory and, therefore, lower than planned margins. Conversely, if we underestimate consumer demand for our merchandise, or if our manufacturers fail to supply quality products in a timely manner, we may experience inventory shortages, which may negatively impact customer relationships, diminish brand loyalty and result in lost sales.

There can be no assurance that our new product offerings will have the same level of acceptance as our product offerings in the past or that we will be able to adequately and timely respond to the preferences of our customers. The failure of our product offerings to appeal to our customers could have a material adverse effect on our business, results of operations and financial condition.

Our business depends in part on a strong brand image, and if we are not able to maintain and enhance our brand, particularly among our target segment and in new markets where we have limited brand recognition, we may be unable to attract sufficient numbers of customers to our stores or sell sufficient quantities of our products.

Our ability to maintain our reputation is critical to our brand image. Our reputation could be jeopardized if we fail to maintain high standards for merchandise quality and integrity. Any negative publicity about these types of concerns may reduce demand for our merchandise. Failure to maintain high ethical, social and environmental standards for all of our operations and activities, including those of our third-party manufacturers (if they do not, for instance, adhere to our vendor code of conduct), or adverse publicity regarding our responses to these concerns could also jeopardize our reputation. Failure to comply with local laws and regulations, to maintain an effective system of internal controls or to provide accurate and timely financial statement information could also hurt our reputation. Damage to our reputation or loss of consumer confidence for any of these reasons could have a material adverse effect on our business, financial condition and results of operations, as well as require additional resources to rebuild our reputation.

We could face increased competition from other brands or retailers that could adversely affect our ability to generate higher net sales and margins, as well as our ability to obtain favorable store locations.

We face substantial competition in the plus-size women’s apparel industry from both specialty and general retailers, including department stores, mass merchants, regional retail chains, web-based stores and other direct retailers that engage in the retail sale of apparel, accessories, footwear and other similar product categories. We compete with these businesses for customers, vendors, digital marketing channels, suitable store locations and personnel. We compete on the basis of a combination of factors, including among others, our knowledge of and focus on our target segment, price, breadth, quality, fit and style of merchandise offered, in-store experience, level of customer service, ability to identify and offer new and emerging product trends and brand image.

Many of our competitors have greater financial, marketing and other resources available. In many cases, our competitors sell their products in stores that are located in the same shopping centers as our stores. In addition to competing for sales, we compete for favorable site locations and lease terms in malls, strip centers, lifestyle centers and outlet centers and our competitors may be able to secure more favorable locations than we can as a result of their relationships with, or appeal to, landlords. Our competitors may also sell substantially similar products at reduced prices online or through outlet locations or discount stores, increasing the competitive pricing pressure for those products.

We also compete with other retailers for personnel. The competition for retail talent is increasing, and we may not be able to secure the talent we need to operate our stores without increasing wages. We cannot assure you that we will continue to be able to compete successfully against existing or future competitors. Our expansion into markets served by our competitors and entry of new competitors or expansion of existing competitors into our markets could have a material adverse effect on us.

We rely on third parties to drive traffic to our website, and these providers may change their algorithms or pricing in ways that could negatively impact our business, operations, financial condition and prospects.

We rely in part on digital advertising, including search engine marketing, to promote awareness of our online marketplace, grow our business, attract new customers and increase engagement with existing customers. In particular, we rely on search engines, such as Google, and the major mobile app stores as important marketing channels. Search engine companies change their search algorithms periodically, and our ranking in searches may be adversely impacted by those changes. Search engine companies or app stores may also determine that we are not in compliance with their guidelines and penalize us as a result. If search engines change their algorithms, terms of service, display or the featuring of search results, determine we are out of compliance with their terms of service or if competition increases for advertisements, we may be unable to cost-effectively attract customers. Our relationships with our marketing vendors are not long term in nature and do not require any specific performance commitments. In addition, many of our online advertising vendors provide advertising services to other companies, including companies with whom we may compete. As competition for online advertising has increased, the cost for some of these services has also increased. Our marketing initiatives may become increasingly expensive and generating a return on those initiatives may be difficult. Even if we successfully increase revenue as a result of our paid marketing efforts, such increase may not offset the additional marketing expenses we incur.

Our ability to attract customers to our physical stores that are located in shopping centers depends on the success of these shopping centers, and any decrease in customer traffic in these shopping centers could cause our net sales and profitability to be less than expected.

Our stores are primarily located in shopping centers, and some of these shopping centers have been experiencing declines in customer traffic, including as a result of the COVID-19 pandemic. While we believe we are a destination for our customers, our sales at these stores are impacted by the volume of customer traffic in those shopping centers and the surrounding area. In centers that may experience declining customer traffic, certain of our expenses are contractually fixed and our ability to reduce these expenses if we were to experience sales declines is limited in the near term. To mitigate this potential risk, we have negotiated termination provisions in a majority of our store leases that allow us to terminate the lease if store sales fall below certain thresholds or if certain co-tenancy requirements are not met. However, these provisions may not be adequate to protect our results of operations if our sales were to decline.

Our stores benefit from the ability of a shopping center's other tenants, particularly anchor stores, such as department stores, to generate consumer traffic in the vicinity of our stores and maintain the overall popularity of the shopping center as a shopping destination. Our net sales volume and traffic generally may be adversely affected by, among other things, a decrease in popularity of the shopping centers in which our stores are located, the closing of anchor stores important to our business, a decline in the popularity of other stores in the shopping centers in which our stores are located, changing economic conditions and/or demographic patterns (including any increases in purchases of merchandise online as opposed to in-store), or a deterioration in the financial condition of shopping center operators or developers which could, for example, limit their ability to finance tenant improvements for us and other retailers. A reduction in customer traffic as a result of these or any other factors, or our inability to obtain or maintain favorable store locations within shopping centers could have a material adverse effect on us.

If we are unable to successfully adapt to consumer shopping preferences and develop and maintain a relevant and reliable omni-channel experience for our customers, our financial performance and brand image could be adversely affected.

We are continuing to grow our omni-channel business model. While we interact with many of our customers largely through our stores, our customers are increasingly using computers, tablets and smartphones to make

purchases online and to help them in making purchasing decisions when in our stores. Our customers also engage with us online through our social media channels, including Facebook, Instagram, Pinterest and Twitter, by providing feedback and public commentary about all aspects of our business. Omni-channel retailing is rapidly evolving and our success depends on our ability to anticipate and implement innovations in customer experience and logistics in order to appeal to customers who increasingly rely on multiple channels to meet their shopping needs. If for any reason we are unable to implement our omni-channel initiatives or provide a convenient and consistent experience for our customers across all channels that provides the products they want, when and where they want them, then our financial performance and brand image could be adversely affected.

Our growth strategy is dependent on a number of factors, any of which could strain our resources or delay or prevent the successful penetration into new markets.

Our growth strategy is dependent on a number of factors, including growing our number of active customers and the spend per customer. Additional factors required for the successful implementation of our growth strategy include, but are not limited to, opening new stores and remodeling existing ones, continuing to operate an effective e-Commerce platform and implementing initiatives to improve our existing operations, obtaining desirable store locations, negotiating acceptable leases, completing projects on budget, supplying proper levels of merchandise and successfully hiring and training store managers and sales associates. In order to optimize profitability for new stores, we must secure desirable retail lease space when opening stores in new and existing markets. We must choose store sites, execute favorable real estate transactions on terms that are acceptable to us, hire competent personnel and effectively open and operate these new stores. We historically have received landlord allowances for store build outs, which offset certain capital expenditures we must make to open a new store. If landlord allowances cease to be available to us in the future or are decreased, opening new stores would require increased capital outlays, which could adversely affect our ability to continue opening new stores.

While we believe the opportunity exists to open a substantial number of stores without competing with our existing units, to the extent we open new stores in markets where we have existing stores, our existing stores in those markets may experience reduced net sales. Moving or expanding store locations and operating stores in new markets present competitive, merchandising and regulatory challenges we do not have experience in or know how to face. Our planned growth will also require additional infrastructure for the development, maintenance and monitoring of those stores. In addition, if our current management systems and information systems are insufficient to support this expansion, our ability to open new stores and to manage our existing stores would be adversely affected. If we fail to continue to improve our infrastructure, we may be unable to implement our growth strategy or maintain current levels of operating performance in our existing stores.

Our growth plans will place increased demands on our financial, operational, managerial and administrative resources. These increased demands may cause us to operate our business less efficiently, which in turn could cause deterioration in the performance of our existing stores.

Executing our growth plans and achieving our objectives is dependent upon our ability to successfully execute against such plans and objectives. There can be no guarantee that these plans or objectives will result in improved operating results or an increase in the value of the business.

We have, and will continue to have, significant lease obligations. We are subject to risks associated with leasing substantial amounts of space, including future increases in occupancy costs and the need to generate cash flow to meet our lease obligations.

We have, and will continue to have, significant lease obligations. We lease all of our store locations and our corporate headquarters. We typically occupy our stores under operating leases with initial terms of up to ten years. In the future, we may not be able to negotiate favorable lease terms. Our inability to do so may cause our occupancy costs to be higher in future years or may force us to close stores in desirable locations.

A majority of our leases have early termination clauses, which permit the lease to be terminated by us if certain sales levels are not met in specific periods or if the center does not meet specified occupancy standards. In addition to future minimum lease payments, some of our store leases provide for additional rental payments based on a percentage of net sales, or "percentage rent," if sales at the respective stores exceed specified levels, as well as the payment of common area maintenance charges, real property insurance and real estate taxes. Many of our lease agreements have defined escalating rent provisions over the initial term and any extensions. As we expand our footprint, our lease expense and our cash outlays for rent under the lease terms will increase.

We depend on cash flow from operations to pay our lease expenses. If our business does not generate sufficient cash flow from operating activities to fund these expenses, we may not be able to service our lease expenses, which could materially harm our business. Furthermore, the significant cash flow required to satisfy our obligations under the leases increases our vulnerability to adverse changes in general economic, industry, and competitive conditions, and could limit our ability to fund working capital, incur indebtedness, and make capital expenditures or other investments in our business.

If an existing or future store is not generating positive contribution, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. Moreover, even if a lease has an early cancellation clause, we may not satisfy the contractual requirements for early cancellation under that lease. Our inability to enter into new leases or renew existing leases on terms acceptable to us or be released from our obligations under leases for stores that we close could materially adversely affect us.

Our failure to find store employees that reflect our brand image and embody our culture could adversely affect our business.

Our success depends in part upon our ability to attract, motivate and retain a sufficient number of store employees, including store managers, who understand and appreciate our corporate culture and customers, and are able to adequately and effectively represent this culture and establish credibility with our customers. The store employee turnover rate in the retail industry is generally high. Excessive store employee turnover will result in higher employee costs associated with finding, hiring and training new store employees. If we are unable to hire and retain store personnel capable of consistently providing a high level of customer service, as demonstrated by their enthusiasm for our culture, understanding of our customers and knowledge of the merchandise we offer, our ability to open new stores may be impaired, the performance of our existing and new stores could be materially adversely affected and our brand image may be negatively impacted. Competition for such qualified individuals could require us to pay higher wages to attract a sufficient number of employees.

Additionally, our labor costs are subject to many external factors, including unemployment levels, prevailing wage rates, minimum wage laws, potential collective bargaining arrangements, health insurance costs and other insurance costs and changes in employment and labor legislation or other workplace regulation (including changes in entitlement programs such as health insurance and paid leave programs). Such increase in labor costs may adversely impact our profitability, or if we fail to pay such higher wages we could suffer increased employee turnover.

While we have not historically experienced significant sales seasonality, we may require temporary personnel to adequately staff our stores, with heightened dependence during busy periods such as the holiday season and when multiple new stores are opening. There can be no assurance that we will receive adequate assistance from our temporary personnel, or that there will be sufficient sources of suitable temporary personnel to meet our demand. Any such failure to meet our staffing needs or any material increases in employee turnover rates could have a material adverse effect on our business or results of operations.

We rely on third parties to provide us with certain key services for our business. If any of these third parties fails to perform their obligations to us or declines to provide services to us in the future, we may suffer a disruption to our business. Furthermore, we may be unable to provide these services or implement substitute arrangements on a timely basis on terms favorable to us.

We receive certain key services from a range of different third parties, including merchandise vendors, landlords, suppliers and logistics partners. For example, we rely on third-parties to provide certain inbound and outbound transportation and delivery services, distribution services, customs and brokerage services and real estate management services. In connection with our sourcing activities, we rely on vendors to help us source products. If any of these third parties fails to perform their obligations to us or declines to provide services to us in the future, we may suffer a disruption to our business or increased costs. Furthermore, we may be unable to provide these services or implement substitute arrangements on a timely and cost-effective basis on terms favorable to us.

Failure to effectively utilize information systems and implement new technologies could disrupt our business or reduce our sales or profitability.

We rely extensively on various information systems, including data centers, hardware and software and applications to manage many aspects of our business, including to process and record transactions in our stores, to enable effective communication systems, to track inventory flow, to manage logistics and to generate performance and financial reports. These various systems are substantially operated by our services provider and we rely on them for efficient and consistent operations of these systems. We are dependent on the integrity, security and consistent operations of these systems and related back-up systems. Our computer systems and the third-party systems we rely on are also subject to damage or interruption from a number of causes, including power outages; computer and telecommunications failures; computer viruses, malware, phishing or distributed denial-of-service attacks; security breaches; cyber-attacks; catastrophic events such as fires, floods, earthquakes, tornadoes, hurricanes; acts of war or terrorism and design or usage errors by our associates or contractors. Compromises, interruptions or shutdowns of our systems, including those managed by third parties, whether intentional or inadvertent, could lead to delays in our business operations and, if significant or extreme, affect our results of operations.

From time to time, our systems require modifications and updates, including by adding new hardware, software and applications; maintaining, updating or replacing legacy programs; and integrating new service providers, and adding enhanced or new functionality. Although we are actively selecting systems and vendors and implementing procedures to enable us to maintain the integrity of our systems when we modify them, there are inherent risks associated with modifying or replacing systems, and with new or changed relationships, including accurately capturing and maintaining data, realizing the expected benefit of the change and managing the potential disruption of the operation of the systems as the changes are implemented. Potential issues associated with implementation of these technology initiatives could reduce the efficiency of our operations in the short term. In addition, any interruption in the operation of our websites, particularly our e-Commerce site, could cause us to suffer reputational harm or to lose sales if customers are unable to access our site or purchase merchandise from us during such interruption. The efficient operation and successful growth of our business depends upon our information systems. The failure of our information systems and the third party systems we rely on to perform as designed, or our failure to implement and operate them effectively, could disrupt our business or subject us to liability and thereby harm our profitability.

Unauthorized disclosure of sensitive or confidential information, whether through a breach of our computer system or otherwise, could severely hurt our business.

Some aspects of our business, like that of most direct-to-consumer businesses, involves the receipt, storage and transmission of customers' personal information, consumer preferences and payment card information, including in relation to our private label credit card, as well as confidential information about our associates, our

suppliers and our Company, some of which is entrusted to third-party service providers and vendors. We increasingly rely on commercially available systems, software, tools (including encryption technology) and monitoring to provide security and oversight for processing, transmission, storage and the protection of confidential information. Despite the security measures we have in place, our facilities and systems, and those of third parties with which we do business, may be vulnerable to security breaches, acts of vandalism and theft, computer viruses, misplaced or lost data, programming and/or human errors, or other similar events.

Electronic security attacks designed to gain access to sensitive information by breaching mission critical systems of large organizations are constantly evolving, and high profile electronic security breaches leading to unauthorized release of confidential information have occurred recently at a number of major U.S. companies. Attempts by computer hackers or other unauthorized third parties to penetrate or otherwise gain access to our computer systems or the systems of third parties with which we do business through fraud or other means of deceit, if successful, may result in the misappropriation of personal information, payment card or check information or confidential business information. Such incidents have been attempted or have occurred in the past, and may occur in the future. Hardware, software or applications we utilize may contain defects in design or manufacture or other problems that could unexpectedly compromise information security. In addition, our associates, contractors or third parties with which we do business or to which we outsource business operations may attempt to circumvent our security measures in order to misappropriate such information, and may purposefully or inadvertently cause a breach involving such information. Despite advances in security hardware, software, and encryption technologies, the methods and tools used to obtain unauthorized access, disable or degrade service, or sabotage systems are constantly changing and evolving, and may be difficult to anticipate or detect for long periods of time. We are implementing and updating, our processes and procedures to protect against unauthorized access to or use of secured data and to prevent data loss. However, the ever- evolving threats mean we and our third-party service providers and vendors must continually evaluate and adapt our respective systems, procedures, controls and processes, and there is no guarantee that they will be adequate to safeguard against all data security breaches or misuses of data.

An electronic security breach in our systems (or in the systems of third parties with which we do business) that results in the unauthorized release of individually identifiable customer or other sensitive data could nonetheless occur and have a material adverse effect on our reputation and lead to financial losses from remedial actions, loss of business or potential liability, including possible punitive damages. In addition, as the regulatory environment relating to retailers and other companies' obligation to protect such sensitive data becomes increasingly rigorous, with new and constantly changing requirements applicable to our business, compliance with those requirements could result in additional costs, and a material failure on our part to comply could subject us to fines or other regulatory sanctions and potentially to lawsuits. Further, we could be required to expend significant capital and other resources to address any data security incident or breach, which may not be covered or fully covered by our insurance and which may involve payments for investigations, forensic analyses, legal advice, public relations advice, system repair or replacement, or other services.

Use of social media, emails and text messages may adversely impact our reputation or subject us to fines or other penalties.

We use social media, emails, push notifications and text messages as part of our omni-channel approach to marketing. As laws and regulations evolve to govern the use of these channels, the failure by us, our employees or third parties acting at our direction to comply with applicable laws and regulations in the use of these channels could adversely affect our reputation or subject us to fines or other penalties. In addition, our employees or third parties acting at our direction may knowingly or inadvertently make use of social media in ways that could lead to the loss or infringement of intellectual property, as well as the public disclosure of proprietary, confidential or sensitive personal information of our business, employees, consumers or others. Information concerning us or our brands, whether accurate or not, may be posted on social media platforms at any time, including by social media influencers, and may have an adverse impact on our brand, reputation or business. The harm may be immediate without affording us an opportunity for redress or correction and could have a material adverse effect on our reputation, business, operating results, financial condition and prospects.

We may recognize impairments on long-lived assets.

Our long-lived assets, primarily stores and intangible assets, are subject to periodic testing for impairment. Store assets are reviewed using factors including, but not limited to, our future operating plans and projected future cash flows. Failure to achieve our future operating plans or generate sufficient levels of cash flow at our stores could result in impairment charges on long-lived assets, which could have a material adverse effect on our financial condition or results of operations.

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

We do not own or operate any manufacturing facilities and therefore depend upon third parties for the manufacture of all of our merchandise. The inability of a manufacturer to ship goods on time and to our specifications, or to operate in compliance with our guidelines or any other applicable laws, could negatively impact our business.

We do not own or operate any manufacturing facilities. As a result, we are dependent upon our timely receipt of quality merchandise from third-party manufacturers. If our manufacturers do not ship orders to us in a timely manner or meet our quality standards, it could cause delays in responding to consumer demands or inventory shortages and negatively affect consumer confidence in the quality and value of our brand or negatively impact our competitive position. Any of these factors could have a material adverse effect on our financial condition or results of operations. Furthermore, we are susceptible to increases in sourcing costs, which we may not be able to pass on to customers, and changes in payment terms from manufacturers, which could adversely affect our financial condition and results of operations.

We maintain compliance guidelines for our vendors that dictate various standards, including product quality, manufacturing practices, labor compliance and legal compliance. If any of our manufacturers fail to comply with applicable laws or these guidelines, or engage in any socially unacceptable business practices, such as poor working conditions, child labor, disregard for environmental standards or otherwise, our brand reputation could be negatively impacted and our results of operations could in turn be materially adversely affected.

The raw materials used to manufacture our products and our transportation and labor costs are subject to availability constraints and price volatility, including as a result of climate change related governmental actions, which could result in increased costs.

The raw materials used to manufacture our merchandise are subject to availability constraints and price volatility caused by high demand for cotton, high demand for petroleum-based synthetic and other fabrics, weather conditions, supply conditions, government regulations, economic climate and other unpredictable factors. In addition, our transportation and labor costs are subject to price volatility caused by many of these same factors. Increases in the demand for, or the price of, raw materials used to manufacture our merchandise or increases in transportation or labor costs could each have a material adverse effect on our cost of sales or our ability to meet our customers' needs. We may not be able to pass all or a material portion of such increased costs on to our customers, which could negatively impact our profitability. Higher gasoline prices may also affect the willingness of consumers to drive to our stores or the shopping centers where they are located, and thereby adversely affect customer traffic. Continued rises in energy or other commodity costs could adversely affect consumer spending and demand for our products and increase our operating costs, either of which could have a material adverse effect on our financial condition and results of operations.

We are also subject to risks associated with new governmental mandates, standards or regulations intended to reduce greenhouse gas emissions or projected climate change impacts, which have resulted in, and are likely to continue resulting in, increased costs for us and our suppliers. Governmental requirements directed at regulating greenhouse gas emissions could cause us to incur expenses that we cannot recover or that will require us to increase the price of products we sell to the point that it impacts demand for those products.

The interruption of the flow of merchandise from international manufacturers could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs and other charges on imports and exports.

We purchase the majority of our merchandise outside of the United States through arrangements with various vendors. In 2020, approximately 96% of our product receipts were sourced internationally, primarily from Asia. Political, social or economic instability in these regions, or in other regions where our products are made, could cause disruptions in trade, including exports to the United States. Actions in various countries, particularly China and the United States, have created uncertainty with respect to tariff impacts on the costs of some of our merchandise. The degree of our exposure is dependent on (among other things) the type of goods, rates imposed, and timing of the tariffs. Other events that could also cause disruptions to our supply chain include:

- the imposition of additional trade law provisions or regulations;
- the imposition of additional duties, tariffs and other charges on imports and exports, including as a result of the escalating trade war between China and the United States;
- quotas imposed by bilateral textile agreements;
- foreign currency fluctuations;
- natural disasters;
- public health issues and epidemic diseases, their effects (including any disruptions they may cause) or the perception of their effects, such as the ongoing novel coronavirus outbreak originating in China;
- theft;
- restrictions on the transfer of funds;
- the financial instability or bankruptcy of manufacturers; and
- significant labor disputes, such as dock strikes.

We cannot predict whether the countries in which our merchandise is manufactured, or may be manufactured in the future, will be subject to new or additional trade restrictions imposed by the United States or other foreign governments, including the likelihood, type or effect of any such restrictions. Trade restrictions, including new or increased tariffs or quotas, border taxes, embargoes, safeguards and customs restrictions against apparel items, as well as labor strikes and work stoppages or boycotts, could increase the cost or reduce or delay the supply of apparel available to us and adversely affect our business, financial condition or results of operations. See also "—We source a significant amount of our product receipts from China, which exposes us to risks inherent in doing business there" and "—Changes in tax laws or regulations or in our operations may impact our effective tax rate and may adversely affect our business, financial condition and results of operations."

We source a significant amount of our product receipts from China, which exposes us to risks inherent in doing business there.

In 2020, we sourced 49% of our products from manufacturing partners in China. Additionally, our manufacturing partners outside of China may source their own raw materials from third parties in other countries, including China. With the rapid development of the Chinese economy, the cost of labor has increased and may continue to increase in the future. Furthermore, pursuant to Chinese labor laws, employers in China are subject to various requirements when signing labor contracts, paying remuneration, determining the term of employees' probation and unilaterally terminating labor contracts. Our results of operations will be materially and adversely affected if the labor costs of our third-party suppliers and manufacturers increase significantly. In addition, we and our manufacturers and suppliers may not be able to find a sufficient number of qualified workers due to the intensely competitive and fluid market for skilled labor in China.

Sourcing our product receipts from China exposes us to political, legal and economic risks. In particular, the political, legal and economic climate in China, both nationally and regionally, is fluid and unpredictable. Our ability to source product receipts from China may be adversely affected by changes in U.S. and Chinese laws and regulations such as those related to, among other things, taxation, import and export tariffs, environmental regulations, land use rights, intellectual property, currency controls, network security, employee benefits, hygiene supervision and other matters. In addition, we may not obtain or retain the requisite legal permits to continue to source our product receipts from China, and costs or operational limitations may be imposed in connection with obtaining and complying with such permits. In addition, Chinese trade regulations are in a state of flux, and we may become subject to other forms of taxation, tariffs and duties in China. Furthermore, the third parties we rely on in China may disclose our confidential information or intellectual property to competitors or third parties, which could result in the illegal distribution and sale of counterfeit versions of our products. Also, outbreaks of epidemic, pandemic, or contagious diseases, such as the ongoing COVID-19 outbreak originating in China, may adversely impact our ability to source products from China, including fabrics, or to source them in a timely manner. Such impacts on our sourcing could result from, among other things, disruptions from the temporary closure of third-party supplier and manufacturer facilities, restrictions on the export or shipment of our products or significant cutback of ocean container delivery from China. If any of these events occur, our business, financial condition and results of operations could be materially and adversely affected. See also "—The interruption of the flow of merchandise from international manufacturers could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs and other charges on imports and exports" and "—Changes in tax laws or regulations or in our operations may impact our effective tax rate and may adversely affect our business, financial condition and results of operations."

If the distribution facilities servicing our business were to encounter difficulties or if they were to shut down for any reason, we could face shortages of inventory in our stores, delayed shipments to our e-Commerce customers and harm to our reputation. Any of these issues, as well as loss of the use of our corporate offices due to natural disasters, public health issues or otherwise could have a material adverse effect on our business operations.

We operate and are continuing to invest in our own distribution facility in West Jefferson, Ohio. In addition, our omni-channel business model is serviced in part by a distribution facility that is operated by Hot Topic, in City of Industry, California. As of August 2019, we transitioned our e-Commerce fulfillment operations to our facility in West Jefferson, Ohio and as of October 2020, we transitioned our retail fulfillment that was serviced out of Hot Topic's facility in La Vergne, Tennessee to our facility in West Jefferson, Ohio. We continue to use Hot Topic's distribution facility located in City of Industry, California, to support a significant portion of our business. The success of our stores depends on their timely receipt of merchandise. The efficient flow of our merchandise requires that our distribution facilities be operated effectively and have adequate capacity to support our current level of operations and any anticipated increased levels that may follow from the growth of our business.

If we encounter difficulties associated with our distribution facilities, including operational difficulties in connection with fully transitioning to our facility in West Jefferson, Ohio, or in our relationship with the third party operating our facilities or our facilities were to shut down for any reason, including as a result of fire or other natural disaster, public health issues (including COVID-19) or work stoppage, we could face shortages of inventory, resulting in "out of stock" conditions in our stores, incur significantly higher costs and longer lead times associated with distributing our products to both our stores and e-Commerce customers and experience dissatisfaction from our customers. Any of these outcomes could have a material adverse effect on our business and harm our reputation.

In addition to our distribution facilities, our corporate offices are also vulnerable to damage from natural disasters, fire, public health issues and other unexpected events which could cause us to experience significant disruption in our business, resulting in lost sales and productivity, and causing us to incur significant costs to repair, any of which could have a material adverse effect on our business.

We rely upon independent third-party transportation providers for substantially all of our product shipments and are subject to increased shipping costs as well as the potential inability of our third-party transportation providers to deliver on a timely basis.

We currently rely upon independent third-party transportation providers for substantially all of our product shipments, including shipments to our distribution centers, to and from all of our stores and to our customers. Our utilization of these delivery services for shipments is subject to risks, including increases in fuel prices, which would increase our shipping costs, and employee strikes and inclement weather which may impact a shipping company's ability to provide delivery services that adequately meet our shipping needs. If we change the shipping companies we use, we could face logistical difficulties that could adversely affect deliveries and we would incur costs and expend resources in connection with such change. Moreover, we may not be able to obtain terms as favorable as those received from our current independent third-party transportation providers which, in turn, would increase our costs.

Risks Related to Government Regulation and Litigation

Failure to comply with federal and state laws and regulations and industry standards relating to privacy, data protection, advertising and consumer protection, or the expansion of current or the enactment of new laws, regulations or industry standards relating to privacy, data protection, advertising and consumer protection, could adversely affect our business, financial condition, and results of operations.

We rely on a variety of marketing and advertising techniques, including email communications, affiliate partnerships, social media interactions, influencer partnerships, digital marketing, direct mailers and public relations initiatives, and we are subject to various laws, regulations and industry standards that govern such marketing and advertising practices. A variety of federal and state laws and regulations and certain industry standards govern the collection, use, retention, sharing and security of consumer data, particularly in the context of digital marketing which we rely upon to attract new customers.

Laws, regulations and industry standards (including, for example, the Payment Card Industry Data Security Standard, or PCI-DSS) relating to privacy, data protection, marketing and advertising, and consumer protection are evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, standards, requirements and obligations. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any federal or state privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, proceedings or actions against us by governmental entities, customers, suppliers or others or other liabilities or may require us to change our operations and/or cease using certain data sets. Any such claims, proceedings or actions could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, result in a loss of customers, suppliers or vendors and result in the imposition of monetary penalties. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business.

Federal and state governmental authorities continue to evaluate the privacy implications inherent in the use of third-party "cookies" and other methods of online tracking for behavioral advertising and other purposes. The U.S. government has enacted, has considered or is considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or

the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and, consequently, materially and adversely affect our business, financial condition, and results of operations.

In addition, various federal and state legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. For example, in 2020, the California Consumer Privacy Act ("CCPA"), came into force provides new data privacy rights for California consumers and new operational requirements for covered companies. Specifically, the CCPA mandates that covered companies provide new disclosures to California consumers and afford such consumers new data privacy rights that include, among other things, the right to request a copy from a covered company of the personal information collected about them, the right to request deletion of such personal information, and the right to request to opt-out of certain sales of such personal information. The California Attorney General can enforce the CCPA, including seeking an injunction and civil penalties for violations. The CCPA also provides a private right of action for certain data breaches that is expected to increase data breach litigation. Additionally, a new privacy law, the California Privacy Rights Act ("CPRA"), was approved by California voters in the November 3, 2020 election. The CPRA, which takes effect on January 1, 2023 and significantly modifies the CCPA, potentially resulting in further uncertainty and requiring us to incur additional costs and expenses in an effort to comply. Some observers have noted the CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States, which could also increase our potential liability and adversely affect our business. For example, the CCPA has encouraged "copycat" laws and in other states across the country, such as in Virginia, New Hampshire, Illinois and Nebraska. This legislation may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources to compliance programs, and could impact strategies and availability of previously useful data and could result in increased compliance costs and/or changes in business practices and policies. Additionally, the Federal Trade Commission and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination and security of data.

Foreign privacy laws are also undergoing a period of rapid change, have become more stringent in recent years and may increase the costs and complexity of offering our products and services in new geographies. In Canada, where we operate, the Personal Information Protection and Electronic Documents Act, or PIPEDA, and various provincial laws require that companies give detailed privacy notices to consumers; obtain consent to use personal information, with limited exceptions; allow individuals to access and correct their personal information; and report certain data breaches. In addition, Canada's Anti-Spam Legislation, or CASL, prohibits email marketing without the recipient's consent, with limited exceptions. Failure to comply with PIPEDA, CASL or provincial privacy or data protection laws could result in significant fines and penalties or possible damage awards.

In addition, the data protection landscape in the European Union ("EU") and European Economic Area ("EEA") is continually evolving, resulting in possible significant operational costs for internal compliance and risks to our business. The EU adopted the General Data Protection Regulation ("GDPR"), which became effective in May 2018, and contains numerous requirements and changes from previously existing EU laws, including extended data subjects' rights for individuals, consent requirements for certain marketing activities and heavier documentation requirements for data protection compliance programs by companies.

Among other requirements, the GDPR regulates the transfer of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United

States. Recent legal developments in Europe have created complexity and uncertainty regarding such transfers. For instance, on July 16, 2020, the Court of Justice of the European Union (the "CJEU") invalidated the EU-U.S. Privacy Shield Framework (the "Privacy Shield") under which personal data could be transferred from the EEA to U.S. entities who had self-certified under the Privacy Shield scheme. While the CJEU upheld the adequacy of the standard contractual clauses (a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism and potential alternative to the Privacy Shield), it made clear that reliance on such clauses alone may not necessarily be sufficient in all circumstances. Use of the standard contractual clauses must now be assessed on a case-by-case basis taking into account the legal regime applicable in the destination country, including, in particular, applicable surveillance laws and rights of individuals, and additional measures and/or contractual provisions may need to be put in place; however, the nature of these additional measures is currently uncertain. The CJEU went on to state that if a competent supervisory authority believes that the standard contractual clauses cannot be complied with in the destination country and that the required level of protection cannot be secured by other means, such supervisory authority is under an obligation to suspend or prohibit that transfer.

Failure to comply with the GDPR could result in investigations and enforcement by regulators, penalties for noncompliance (including possible fines of up to the greater of €20 million and 4% of our global annual turnover for the preceding financial year for the most serious violations), as well as public exposure as a result of negative press coverage. Failure to comply with the GDPR can also result in claims for compensation for financial or non-financial damages under Article 82 of the GDPR and cease and desist claims brought to court by individuals (i.e. customers or website visitors), litigation financiers or plaintiff organizations bundling claims of affected individuals for purposes of mass litigation, consumer protection organizations acting against "unfair competition" and/or competitors.

In addition to the GDPR, the European Commission has another draft regulation in the approval process that focuses on a person's right to conduct a private life. The proposed legislation, known as the Regulation of Privacy and Electronic Communications ("ePrivacy Regulation"), would replace the current ePrivacy Directive. While the text of the ePrivacy Regulation is still under development, a recent European court decision and regulators' recent guidance are driving increased attention to cookies and tracking technologies. Regulators started initiatives to enforce the strict approach in recent guidance, which could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, increase costs and subject us to additional liabilities. Regulation of cookies and similar technologies may lead to broader restrictions on our marketing and personalization activities and may negatively impact our efforts to interact with our customers.

Further, in March 2017, the United Kingdom ("U.K.") formally notified the European Council of its intention to leave the EU pursuant to Article 50 of the Treaty on European Union ("Brexit"). The U.K. ceased to be an EU Member State on January 31, 2020, but enacted a Data Protection Act substantially implementing the GDPR, effective in May 2018, which was further amended to align more substantially with the GDPR following Brexit. It is unclear how U.K. data protection laws or regulations will develop in the medium to longer term and how data transfers to and from the U.K. will be regulated. Some countries also are considering or have enacted legislation requiring local storage and processing of data that could increase the cost and complexity of delivering our services. Beginning in 2021 when the transitional period following Brexit expires, we will be required to comply with both the GDPR and the U.K. GDPR, with each regime having the ability to fine up to the greater of €20 million (in the case of the GDPR) or £17 million (in the case of the U.K. GDPR) and 4% of total annual revenue. The relationship between the U.K. and the E.U. in relation to certain aspects of data protection law remains unclear, including, for example, how data transfers between E.U. member states and the U.K. will be treated following the end of the transitional period. These changes could lead to additional costs and increase our overall risk exposure.

Further, we are subject to the Payment Card Industry, or PCI, Data Security Standard, which is a multifaceted security standard that is designed to protect credit card account data as mandated by payment card

industry entities. We rely on vendors to handle PCI matters and to ensure PCI compliance. Despite our compliance efforts, we may become subject to claims that we have violated the PCI Data Security Standard, based on past, present, and future business practices, which could have an adverse impact on our business and reputation.

Each of these privacy, security, and data protection laws and regulations, and any other such changes or new laws or regulations, could impose significant limitations, require changes to our business, or restrict our use or storage of personal information, which may increase our compliance expenses and make our business more costly or less efficient to conduct. In addition, any such changes could compromise our ability to develop an adequate marketing strategy and pursue our growth strategy effectively, which, in turn, could adversely affect our business, financial condition, and results of operations. Finally, any actual or perceived failure to comply with these laws could result in a costly investigation or litigation resulting in potentially significant liability and a material and adverse impact on our reputation and business.

We are subject to payment-related risks that could increase our operating costs, expose us to fraud or theft, subject us to potential liability and potentially disrupt our business.

We accept payments using a variety of methods, including cash, checks, credit and debit cards, and gift cards, and we may offer new payment options over time. Acceptance of these payment options subjects us to rules, regulations, contractual obligations and compliance requirements, including payment network rules and operating guidelines, data security standards and certification requirements, and rules governing electronic funds transfers. These requirements may change over time or be reinterpreted, making compliance more difficult or costly.

For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs. We rely on third parties to provide payment processing services, including the processing of credit cards, debit cards, and other forms of electronic payment. If these companies become unable to provide these services to us, or if their systems are compromised, it could potentially disrupt our business. The payment methods that we offer also subject us to potential fraud and theft by criminals, who are becoming increasingly more sophisticated, seeking to obtain unauthorized access to or exploit weaknesses that may exist in the payment systems. If we fail to comply with applicable rules or requirements for the payment methods we accept, or if payment-related data is compromised due to a breach or misuse of data, we may be liable for costs incurred by payment card issuing banks and other third parties or subject to fines and higher transaction fees, or our ability to accept or facilitate certain types of payments may be impaired. In addition, our customers could lose confidence in certain payment types, which may result in a shift to other payment types or potential changes to our payment systems that may result in higher costs. As a result, our business and operating results could be adversely affected.

There are claims made against us from time to time that can result in litigation or regulatory proceedings which could distract management from our business activities and result in significant liability.

We face the risk of litigation and other claims against us. Litigation and other claims may arise in the ordinary course of our business and include commercial disputes, employment related claims, including wage and hour claims, intellectual property disputes, such as trademark, copyright and patent infringement disputes, consumer protection and privacy matters, product-related allegations, and premises liability claims. In addition, we could face a wide variety of employee claims against us, including general discrimination, privacy, labor and employment, ERISA and disability claims.

Any claims could result in litigation against us and could also result in regulatory proceedings being brought against us by various federal and state agencies that regulate our business, including the United States Equal Employment Opportunity Commission, the Federal Trade Commission or the Consumer Product Safety Commission. Often these cases raise complex factual and legal issues, which are subject to risks and uncertainties and could require significant management time. Litigation and other claims and regulatory

proceedings against us could result in unexpected expenses, legal liability and injunctions against us or restrictions placed upon us, which could disrupt our operations, preclude us from selling products, or otherwise have a material adverse effect on our operations, financial results and our reputation.

In addition, we may be subject to liability if we infringe the trademarks or other intellectual property rights of third parties. If we were to be found liable for any such infringement, we could be required to pay substantial damages and could be subject to injunctions preventing further infringement. Such infringement claims could subject us to boycotts by our customers and harm to our brand image. In addition, any payments we are required to make and any injunctions we are required to comply with as a result of such infringement actions could adversely affect our financial results.

Changes in laws, including employment laws and laws related to our merchandise, could make conducting our business more expensive or otherwise change the way we do business.

We are subject to numerous laws and regulations, including labor and employment, product safety, customs, truth-in-advertising, consumer protection, privacy and zoning and occupancy laws and ordinances, intellectual property laws and other laws that regulate retailers generally and/or govern the import and export of goods, advertising and promotions, the sale of merchandise, product content and the operation of stores and warehouse facilities. If these regulations were to change or were violated by our management, employees, vendors, buying agents or trading companies, the costs of certain goods could increase, or we could experience delays in shipments of our goods, be subject to fines or penalties, or suffer reputational harm, which could reduce demand for our merchandise and hurt our business and results of operations.

In addition to increased regulatory compliance requirements, changes in laws could make ordinary conduct of our business more expensive or require us to change the way we do business. For example, changes in federal and state minimum wage laws could raise the wage requirements for certain of our employees, which would likely cause us to reexamine our entire wage structure for stores. Other laws related to employee benefits and treatment of employees, including laws related to limitations on employee hours, work scheduling, supervisory status, leaves of absence, mandated health benefits or overtime pay, could also negatively impact us, such as by increasing compensation and benefits costs for overtime and medical expenses.

Moreover, changes in product safety or other consumer protection laws, environmental laws and other regulations could lead to increased compliance costs to us for certain merchandise, or additional labor costs associated with readying merchandise for sale. It is often difficult for us to plan and prepare for potential changes to applicable laws and future compliance costs related to such changes could be material to us. See "—Failure to comply with federal and state laws and regulations and industry standards relating to privacy, data protection, advertising and consumer protection, or the expansion of current or the enactment of new laws, regulations or industry standards relating to privacy, data protection, advertising and consumer protection, could adversely affect our business, financial condition, and results of operations."

Changes in tax laws or regulations or in our operations may impact our effective tax rate and may adversely affect our business, financial condition and results of operations.

Changes in tax laws or regulations in any of the jurisdictions in which we operate, or adverse outcomes from tax audits that we may be subject to in any of the jurisdictions in which we operate, could result in an unfavorable change in our effective tax rate, which could adversely affect our business, financial condition and operating results. The "Coronavirus Aid, Relief, and Economic Security Act," or the CARES Act, was signed into law in March 2020 in response to the COVID-19 pandemic. The CARES Act resulted in significant changes to the U.S. federal corporate tax law and provides numerous tax provisions and other stimulus measures, including temporary changes regarding the prior and future utilization of net operating losses, temporary changes to the prior and future limitations on interest deductions, temporary suspension of certain payment requirements for the employer portion of Social Security taxes, technical corrections from prior tax legislation for tax

depreciation of certain qualified improvement property, and the creation of certain refundable employee retention credits. Additionally, several state and foreign jurisdictions have enacted additional legislation to conform with federal changes. In December 2020, the "Consolidated Appropriations Act," or the CAA, was enacted in further response to the COVID-19 pandemic. The CAA revises certain tax measures enacted under the CARES Act, such as the deductibility of certain meal and entertainment expense paid or incurred in 2021 and 2022, and employment retention credit claims. We have considered the applicable tax law changes in our tax provision for 2020 and continue to evaluate the impact of these tax law changes on future periods.

Additionally, recent political developments have introduced greater uncertainty with respect to tax and trade policies, tariffs and government regulations affecting trade between the U.S. and other countries. We source the majority of our merchandise from manufacturers located outside of the U.S., including a significant amount from Asia. China and the United States have each previously imposed tariffs on exports from the other in an escalating trade war. It is unclear whether these challenges and uncertainties will be contained or resolved, and what effects they may have on the global political and economic conditions in the long term. Further major developments in tax policy or trade relations, such as the disallowance of tax deductions for imported merchandise or the imposition of unilateral tariffs on imported products, could have a material adverse effect on our business, results of operations and liquidity. See also "—The interruption of the flow of merchandise from international manufacturers could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs and other charges on imports and exports" and "—We source a significant amount of our product receipts from China, which exposes us to risks inherent in doing business there."

The recent presidential and congressional elections in the United States could also result in significant changes in, and uncertainty with respect to, tax legislation, regulation and government policy directly affecting us and our business. For example, the United States government may enact significant changes to the taxation of business entities including, among others, a permanent increase in the corporate income tax rate, an increase in the tax rate applicable to the global intangible low-taxed income and elimination of certain exemptions, and the imposition of minimum taxes or surtaxes on certain types of income. The likelihood of these changes being enacted or implemented is unclear. We are currently unable to predict whether such changes will occur and, if so, the ultimate impact on us or our business. To the extent that such changes have a negative impact on us or our business, these changes may materially and adversely impact our business, financial condition and results of operations.

Government or consumer concerns about product safety could result in regulatory actions, recalls or changes to laws, which could harm our reputation, increase costs or reduce sales.

We are subject to regulation by the Consumer Product Safety Commission and similar state and international regulatory authorities, and our products could be subject to involuntary recalls and other actions by these authorities. We purchase merchandise from suppliers domestically as well as outside the United States. One or more of our suppliers might not adhere to product safety requirements or our quality control standards, and we might not identify the deficiency before such merchandise is received by our customers. Issues of product safety could result in a recall of products we sell. Additionally, regulatory authorities, including the Consumer Product Safety Commission, have undertaken reviews of product safety and are in the process of enacting or are considering various proposals for more stringent laws and regulations. In particular, the Consumer Product Safety Improvement Act of 2008, which imposes significant requirements on the sale of consumer products and enhanced penalties for noncompliance. Such regulations contain provisions which have uncertain applicability to products we sell, and such lack of certainty may inhibit our willingness to carry products or cause us to carry product we otherwise would not. These regulations could result in delays in getting products to our stores, lost sales, the rejection of our products by consumers, damage to our reputation or material increases in our costs, and may have a material adverse effect on our business. Moreover, individuals and organization may assert legal claims for our non-compliance with consumer product rules and regulations, and we may be subject to lawsuits relating to these claims. There is a risk that these claims or liabilities may exceed or fall outside the scope of indemnities provided by third parties or outside the coverages of our insurance policies.

We may be unable to protect our trademarks or other intellectual property rights, which could harm our business.

We rely on certain trademark registrations and common law trademark rights to protect the distinctiveness of our brand. However, there can be no assurance that the actions we have taken to establish and protect our trademarks will be adequate to prevent imitation of our trademarks by others or to prevent others from claiming that sales of our products infringe, dilute or otherwise violate third party trademarks or other proprietary rights that could block sales of our products.

The laws of certain foreign countries may not protect the use of unregistered trademarks to the same extent as do the laws of the United States. As a result, international protection of our brand image may be limited and our right to use our trademarks outside the United States could be impaired. Other persons or entities may have rights to trademarks that contain portions of our marks or may have registered similar or competing marks for apparel and/or accessories in foreign countries in which our vendors source our merchandise. There may also be other prior registrations of trademarks identical or similar to our trademarks in other foreign countries of which we are not aware. Accordingly, it may be possible for others to prevent the manufacture of our branded goods in certain foreign countries or the sale or exportation of our branded goods from certain foreign countries to the United States. If we were unable to reach a licensing arrangement with these parties, our vendors may be unable to manufacture our products in those countries. Our inability to register our trademarks or purchase or license the right to use the relevant trademarks or logos in these jurisdictions could limit our ability to obtain supplies from less costly markets or penetrate new markets in jurisdictions outside the United States.

Litigation may be necessary to protect and enforce our trademarks and other intellectual property rights, or to defend against claims by third parties alleging that we infringe, dilute or otherwise violate third party trademarks or other intellectual property rights. Any litigation or claims brought by or against us, whether with or without merit, and whether successful or not, could result in substantial costs and diversion of our resources, which could have a material adverse effect on our business, financial condition, results of operations or cash flows. Any intellectual property litigation or claims against us could result in the loss or compromise of our intellectual property rights, could subject us to significant liabilities, require us to seek licenses on unfavorable terms, if available at all, prevent us from manufacturing or selling certain products, limit our ability to market or sell to our customers using certain methods or technologies and/or require us to redesign or re-label our products or rename our brand, any of which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Risks Related to Our Indebtedness

Our indebtedness and lease obligations could adversely affect our financial flexibility and our competitive position.

As of May 1, 2021, we had $202.0 million of outstanding indebtedness, net of unamortized original issue discount and debt financing costs, consisting of term loans under the Original Term Loan Credit Agreement. On June 14, 2021, we entered into the New Term Loan Credit Agreement in an initial aggregate amount of $350.0 million and used borrowings thereunder to, among other things, repay and terminate the Original Term Loan Credit Agreement. Our New Term Loan Credit Agreement has a maturity date of June 14, 2028. For a description of our debt service obligations, including mandatory repayments, under the New Term Loan Credit Agreement, see “Description of Certain Indebtedness—New Term Loan Credit Agreement.” Our level of indebtedness increases the risk that we may be unable to generate cash sufficient to pay amounts due in respect of our indebtedness. We also have, and will continue to have, significant lease obligations. As of May 1, 2021, the estimated annual future occupancy payments, for lease terms that include periods covered by options to extend some of our leases, for 2021 was $334.3 million. Our indebtedness and lease obligations could have other important consequences to you and significant effects on our business. For example, it could:

- increase our vulnerability to adverse changes in general economic, industry and competitive conditions;

- require us to dedicate a substantial portion of our cash flow from operations to make payments on our indebtedness and leases, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- restrict us from exploiting business opportunities;
- make it more difficult to satisfy our financial obligations, including payments on our indebtedness;
- place us at a disadvantage compared to our competitors that have less debt and lease obligations; and
- limit our ability to borrow additional funds for working capital, capital expenditures, acquisitions, debt service requirements, execution of our business strategy or other general corporate purposes.

In addition, the New Term Loan Credit Agreement and the agreement governing the Amended ABL Facility contain, and the agreements evidencing or governing any other future indebtedness may contain, restrictive covenants that will limit our ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our indebtedness.

Our indebtedness may restrict our current and future operations, which could adversely affect our ability to respond to changes in our business and to manage our operations.

The New Term Loan Credit Agreement and the agreement governing the Amended ABL Facility contain, and the agreements evidencing or governing any other future indebtedness, may contain, financial restrictions on us and our restricted subsidiaries, including restrictions on our or our restricted subsidiaries' ability to, among other things:

- place liens on our or our restricted subsidiaries' assets;
- make investments other than permitted investments;
- incur additional indebtedness;
- prepay or redeem certain indebtedness;
- merge, consolidate or dissolve;
- sell assets;
- engage in transactions with affiliates;
- change the nature of our business;
- change our or our subsidiaries' fiscal year or organizational documents; and
- make restricted payments (including certain equity issuances).

In addition, we are required to maintain compliance with various financial ratios in the agreement governing the Amended ABL Facility.

A failure by us or our subsidiaries to comply with the covenants under the New Term Loan Credit Agreement or the agreement governing the Amended ABL Facility or to maintain the required financial ratios contained in the agreement governing the Amended ABL Facility could result in an event of default under such indebtedness, which could adversely affect our ability to respond to changes in our business and manage our operations. Additionally, a default by us under the New Term Loan Credit Agreement, the agreement governing the Amended ABL Facility or an agreement governing any other future indebtedness may trigger cross-defaults under the New Term Loan Credit Agreement, the agreement governing the Amended ABL Facility or any other future agreements governing our indebtedness. Upon the occurrence of an event of default or cross-default under any of the present or future agreements governing our indebtedness, the lenders could elect to declare all amounts outstanding to be due and payable and exercise other remedies as set forth in the agreements. If any of our

indebtedness were to be accelerated, there can be no assurance that our assets would be sufficient to repay this indebtedness in full, which could have a material adverse effect on our ability to continue to operate as a going concern. See "Description of Certain Indebtedness."

Risks Related to this Offering and Ownership of Our Common Stock

Following the offering, we will be classified as a "controlled company" and, as a result, we will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements. In addition, Sycamore's interests may conflict with our interests and the interests of other stockholders.

After the closing of this offering, Sycamore will continue to control a majority of our common stock. As a result, we will be a "controlled company" within the meaning of the applicable stock exchange corporate governance standards. Under the rules of the NYSE, a company of which more than 50% of the outstanding voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain stock exchange corporate governance requirements, including:

- the requirement that a majority of our board of directors consists of independent directors;
- the requirement that nominating and corporate governance matters be decided solely by independent directors; and
- the requirement that employee and officer compensation matters be decided solely by independent directors.

Following this offering, we intend to utilize these exemptions. As a result, we may not have a majority of independent directors and our nominating and corporate governance and compensation functions may not be decided solely by independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the stock exchange corporate governance requirements.

The interests of Sycamore and its affiliates, which include Hot Topic, could conflict with or differ from our interests or the interests of our other stockholders. For example, the concentration of ownership held by Sycamore could delay, defer or prevent a change of control of our Company or impede a merger, takeover or other business combination which may otherwise be favorable for us and our other stockholders. Additionally, Sycamore is in the business of making investments in companies and may, from time to time, acquire and hold interests in businesses that compete, directly or indirectly with us. Sycamore may also pursue acquisition opportunities that may be complementary to our business, and as a result, those acquisition opportunities may not be available to us. So long as Sycamore continues to directly or indirectly own a significant amount of our common stock, even if such amount is less than a majority thereof, Sycamore will continue to be able to substantially influence or effectively control our ability to enter into corporate transactions.

An active public market for our common stock may not develop following this offering, which could limit your ability to sell your shares of our common stock at an attractive price, or at all.

Prior to this offering, there has been no public market for our common stock. We cannot predict the extent to which investor interest in our Company will lead to the development of an active trading market in our common stock or how liquid that market might become. An active public market for our common stock may not develop or be sustained after the offering. If an active public market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you, or at all.

We are an "emerging growth company" under the JOBS Act, and any decision on our part to comply with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.

We are an emerging growth company, and, for as long as we continue to be an emerging growth company, we currently intend to take advantage of exemptions from various reporting requirements applicable to other public companies but not to "emerging growth companies," including, but not limited to, not being required to

have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), reduced disclosure obligations regarding executive compensation in our registration statements, periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We will cease to be an emerging growth company upon the earliest of: (i) the last day of the fiscal year (a) in which we had more than $1.07 billion in "total annual gross revenues," (b) we are deemed to be a "large accelerated filer" under the rules of the SEC, or (c) following the fifth anniversary of the date of the completion of this offering; and (ii) the date on which we issue more than $1.0 billion of non-convertible debt over a three-year period. We cannot predict if investors will find our common stock less attractive if we choose to rely on exemptions from certain disclosure requirements. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and the price of our common stock may be more volatile.

In addition, as our business grows, we may cease to satisfy the conditions of an "emerging growth company." Under the JOBS Act, "emerging growth companies" can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies."

We are currently evaluating and monitoring developments with respect to these new rules, and we cannot assure you that we will be able to take advantage of all of the benefits from the JOBS Act.

Our stock price may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares at or above the initial public offering price.

After this offering, the market price for our common stock is likely to be volatile, in part because our shares have not been traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, most of which we cannot control, including:

- quarterly variations in our operating results compared to market expectations;
- changes in preferences of our customers;
- announcements of new products, significant price reductions or other strategic actions by us or our competitors;
- public reactions to our press releases, public announcements and/or filings with the SEC;
- speculation in the press or investment community;
- size of the public float;
- stock price performance and valuations of our competitors;
- fluctuations in stock market prices and volumes;
- default on our indebtedness or foreclosure of our properties;
- actions by competitors or other shopping center tenants;
- changes in senior management or key personnel;
- actions by our stockholders;
- changes in financial estimates by securities analysts or our failure to meet any such estimates;
- negative earnings or other announcements by us or other retail apparel companies;
- downgrades in our credit ratings or the credit ratings of our competitors;

- issuances (or sales by our stockholders) of capital stock;
- general market conditions;
- global economic, legal and regulatory factors unrelated to our performance; and
- the realization of any of the risks described in this section, or other risks that may materialize in the future.

Numerous factors affect our business and cause variations in our operating results and affect our net sales and comparable store sales, including consumer preferences, buying trends and overall economic trends; our ability to identify and respond effectively to product trends and customer preferences; changes in the population of our target segment; actions by competitors and other shopping center tenants; changes in our merchandise mix; pricing; the timing of our releases of new merchandise and promotional events; the level of customer service that we provide in our stores; changes in sales mix among sales channels; our ability to source and distribute products effectively; inventory shrinkage; weather conditions, particularly during the holiday season; and the number of stores we open, close and convert in any period.

The initial public offering price of our common stock will be determined by negotiations between us and the underwriters based upon a number of factors and may not be indicative of prices that will prevail following the consummation of this offering. Volatility in the market price of our common stock may prevent investors from being able to sell their common stock at or above the initial public offering price. As a result, you may suffer a loss on your investment.

In addition, stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many retail companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were involved in securities litigation, we could incur substantial costs and our resources and the attention of management could be diverted from our business.

Future sales of our common stock, or the perception in the public markets that these sales may occur, may depress our stock price.

Sales of substantial amounts of our common stock in the public market after this offering, or the perception that these sales could occur, could adversely affect the price of our common stock and could impair our ability to raise capital through the sale of additional shares. Upon completion of this offering, we will have shares of common stock outstanding. The shares of common stock offered in this offering will be freely tradable without restriction under the Securities Act of 1933, as amended (the "Securities Act"), except for any shares of our common stock that may be held or acquired by our directors, executive officers and other affiliates, as that term is defined in the Securities Act, which will be restricted securities under the Securities Act. Restricted securities may not be sold in the public market unless the sale is registered under the Securities Act or an exemption from registration is available.

We, each of our officers and directors, Sycamore and certain other security holders have agreed, subject to certain exceptions, with the underwriters not to dispose of or hedge any of the shares of common stock or securities convertible into or exchangeable for, or that represent the right to receive, shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of Morgan Stanley & Co. LLC, BofA Securities, Inc. and Goldman Sachs & Co. LLC. See "Underwriting." When the lock-up period expires, we and those of our beneficial owners who are subject to a lock-up agreement will be able to sell our shares in the public market. In addition, Morgan Stanley & Co. LLC, BofA Securities, Inc. and Goldman Sachs & Co. LLC may, in their sole discretion, release all or some portion of the shares subject to lock-up agreements at any time and for any reason. See "Underwriting" and "Shares Eligible For Future Sale." Sales of a substantial number of such shares upon expiration of the lock-up agreements, the perception that such sales may occur, or early release of these agreements, could cause our market price to fall or make it more difficult for you to sell your shares of common stock at a time and price that you deem appropriate.

All of our shares of common stock outstanding as of the date of this prospectus may be sold in the public market by existing stockholders 180 days after the date of this prospectus, subject to applicable limitations imposed under federal securities laws. See "Shares Eligible For Future Sale" for a more detailed description of the restrictions on selling shares of our common stock after this offering.

In the future, we may also issue our securities if we need to raise capital in connection with a capital raise or acquisitions. The amount of shares of our common stock issued in connection with a capital raise or acquisition could constitute a material portion of our then-outstanding shares of our common stock. You may experience immediate dilution upon such future equity issuances or the exercise of stock options to purchase common stock granted to our employees, consultants and directors under our stock option and incentive plans.

Anti-takeover provisions in our organizational documents and Delaware law might discourage or delay acquisition attempts for us that you might consider favorable.

Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the consummation of this offering will contain provisions that may make the merger or acquisition of our Company more difficult without the approval of our board of directors. Among other things, these provisions:

- would allow us to authorize the issuance of undesignated preferred stock in connection with a stockholder rights plan or otherwise, the terms of which may be established and the shares of which may be issued without stockholder approval, and which may include super voting, special approval, dividend, or other rights or preferences superior to the rights of the holders of common stock;
- prohibit stockholder action by written consent from and after the date on which Sycamore, Sycamore Partners Torrid, L.L.C. and each of their respective affiliates (the "Sycamore Investors") cease to beneficially own at least 50% of the total voting power of all then outstanding shares of our common stock (the "Trigger Event") unless such action is recommended by all directors then in office;
- provide that our board of directors is expressly authorized to make, alter, or repeal our bylaws and that from and after the Trigger Event our stockholders may only amend our bylaws with the approval of 75% or more of all of the outstanding shares of our capital stock entitled to vote; and
- establish advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Further, as a Delaware corporation, we are also subject to provisions of Delaware law, which may impair a takeover attempt that our stockholders may find beneficial. These anti-takeover provisions and other provisions under Delaware law could discourage, delay or prevent a transaction involving a change in control of our Company, including actions that our stockholders may deem advantageous, or negatively affect the trading price of our common stock. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing and to cause us to take other corporate actions you desire.

We do not expect to pay any cash dividends for the foreseeable future.

The continued operation and expansion of our business will require substantial funding. Accordingly, we do not anticipate that we will pay any cash dividends on shares of our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend upon results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant. Additionally, our operating subsidiaries are currently restricted from paying cash dividends by the agreements governing their indebtedness, and we expect these restrictions to continue in the future. Accordingly, if you purchase shares in this offering, realization of a gain on

your investment will depend on the appreciation of the price of our common stock, which may never occur. Investors seeking cash dividends in the foreseeable future should not purchase our common stock.

If we are unable to design, implement and maintain effective internal controls in accordance with Section 404 of Sarbanes-Oxley, we may not be able to report our financial results in a timely and reliable manner, which could have a material adverse effect on our business and stock price. We have identified material weaknesses in our internal control over financial reporting.

As a public company, we will have significant requirements for enhanced financial reporting and internal controls. The process of designing and implementing effective internal controls is a continuous effort that requires us to anticipate and react to changes in our business and the economic and regulatory environments and to expend significant resources to maintain a system of internal controls that is adequate to satisfy our reporting obligations as a public company. If we are unable to establish or maintain appropriate internal controls over financial reporting, it could cause us to fail to meet our reporting obligations on a timely basis, result in material misstatements in our consolidated financial statements and harm our operating results. In addition, we will be required upon completion of the offering to comply with the SEC's rules implementing Sections 302 and 404 of Sarbanes-Oxley, which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting starting with the first fiscal year after the completion of this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. Testing and maintaining internal controls may divert our management's attention from other matters that are important to our business. We may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404 of Sarbanes-Oxley.

In connection with the audits of our consolidated financial statements as of and for the years ended January 30, 2016, January 28, 2017 and February 3, 2018 we identified material weaknesses in our internal control over financial reporting. These material weaknesses resulted in a revision and restatement of previously issued annual and interim consolidated financial statements and could result in misstatements to our consolidated financial statements or disclosures that would result in a material misstatement to our annual or interim consolidated financial statements that would not be prevented or detected on a timely basis. The material weaknesses we identified were as follows: (1) we determined that we did not maintain a sufficient complement of resources with an appropriate level of accounting expertise, knowledge and training commensurate with the complexity of our financial accounting and financial reporting requirements to allow for appropriate monitoring of financial reporting matters and internal control over financial reporting; (2) we did not maintain effective controls over the period-end financial reporting process and preparation of financial statements; (3) we configured key accounting systems that allowed for journal entries to be created and posted by the same individual; and (4) we did not design and maintain controls related to the accuracy and presentation of our share-based compensation expense and the corresponding capital contribution from Torrid Holding LLC. As of February 2, 2019, the material weaknesses with respect to a sufficient complement of resources, controls over the financial reporting process, and configuration of key accounting systems had been remediated. We are in the process of designing and implementing measures to improve our internal control over share-based compensation and remediate the control deficiencies that led to this material weakness.

We cannot assure you that the measures we have taken to date, together with any measures we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weakness regarding share-based compensation or to avoid potential future material weaknesses. If we are unable to conclude that we have effective internal control over financial reporting or if our efforts are not successful to remediate the control deficiencies that led to our material weakness regarding share-based compensation or other material weaknesses or control deficiencies occur in the future, the accuracy and timing of our financial reporting may be adversely affected, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements and investors may lose confidence in our financial reporting, which could have a material adverse effect on the trading price of our stock.

Our amended and restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with the Company or the Company's directors, officers or other employees.

Our amended and restated certificate of incorporation will provide that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (1) derivative action or proceeding brought on behalf of our Company, (2) action asserting a claim of breach of a fiduciary duty owed by any director or officer of our Company to the Company or the Company's stockholders, (3) action asserting a claim against the Company or any director or officer of the Company arising pursuant to any provision of the Delaware General Corporation Law (the "DGCL") or our amended and restated certificate of incorporation or our amended and restated bylaws, or (4) action asserting a claim against us or any director or officer of the Company governed by the internal affairs doctrine. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our certificate of incorporation will provide that, unless we consent in writing to the selection of an alternate forum, the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. We note that there is uncertainty as to whether a court would enforce the choice of forum provision with respect to claims under the federal securities laws, and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Any person or entity purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to the forum provisions in our amended and restated certificate of incorporation. This choice-of-forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with the Company or the Company's directors, officers or other employees, which may discourage such lawsuits. Alternatively, if a court were to find this provision of our amended and restated certificate of incorporation inapplicable or unenforceable with respect to one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could materially and adversely affect our business, financial condition and results of operations and result in a diversion of the time and resources of our management and board of directors.

General Risk Factors

We depend on key members of our executive management team and may not be able to retain or replace these individuals or recruit additional personnel, which could harm our business.

We depend on the leadership and experience of key members of our executive management team. The loss of the services of any of our executive management could have a material adverse effect on our business and prospects, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. In addition, we believe that our future success will depend greatly on our continued ability to attract and retain highly skilled and qualified personnel. There is a high level of competition for experienced, successful personnel in the retail industry. Our inability to meet our staffing requirements in the future could impair our growth and harm our business.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We do not currently have and may never obtain research

coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our Company, the trading price for our stock would be negatively impacted. If we obtain securities or industry analyst coverage and if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

We will incur increased costs as a result of becoming a public company, particularly after we are no longer an "emerging growth company."

As a public company, we will incur significant legal, accounting, insurance and other expenses that we have not incurred as a private company, including costs associated with public company reporting requirements. We also have incurred and will incur costs associated with complying with the requirements of Sarbanes-Oxley and related rules implemented by the SEC and. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. These laws and regulations could also make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

After we are no longer an "emerging growth company," we expect to incur additional management time and cost to comply with the more stringent reporting requirements applicable to companies that are deemed accelerated filers or large accelerated filers, including complying with the auditor attestation requirements of Section 404 of Sarbanes-Oxley. See "—We are an "emerging growth company" under the JOBS Act, and any decision on our part to comply with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors."

We are currently unable to estimate the costs we may incur as a result of becoming a public company or the timing of such costs with any degree of certainty.

War, terrorism and other catastrophes could negatively impact our customers, places where we do business and our expenses.

The continued threat of terrorism, heightened security and military action in response to this threat, any future acts of terrorism, and significant natural disasters, public health issues or other catastrophic events may cause disruptions and create uncertainties that affect our business. To the extent that such disruptions or uncertainties negatively impact commercial transportation and shipping, shopping patterns and/or shopping center traffic, or adversely affect consumer confidence or the economy in general, our business, operating results and financial condition could be materially and adversely affected. A significant natural disaster, public health issue or other catastrophic event affecting our facilities could materially affect our supply chain, our information system and other aspects of our operations.

FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that are subject to risks and uncertainties. All statements other than statements of historical fact included in this prospectus are forward-looking statements. Forward-looking statements give our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "anticipate," "estimate," "expect," "project," "plan," "intend," "believe," "may," "will," "should," "can have," "likely" and other words and terms of similar meaning (including their negative counterparts or other various or comparable terminology) in connection with any discussion of the timing or nature of future operating or financial performance or other events. For example, all statements we make relating to our estimated and projected costs, expenditures, cash flows, growth rates and financial results, our plans and objectives for future operations, growth or initiatives, strategies or the expected outcome or impact of pending or threatened litigation are forward-looking statements. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expected, including:

- successfully manage risks relating to the spread of COVID-19, including any adverse impacts on our supply chain, workforce, facilities, customer services and operations;
- changes in consumer spending and general economic conditions;
- our ability to identify and respond to new and changing product trends, customer preferences and other related factors;
- our dependence on a strong brand image;
- damage to our reputation arising from our use of social media, email and text messages;
- increased competition from other brands and retailers;
- our reliance on third parties to drive traffic to our website;
- the success of the shopping centers in which our stores are located;
- our ability to adapt to consumer shopping preferences and develop and maintain a relevant and reliable omni-channel experience for our customers;
- our dependence upon independent third parties for the manufacture of all of our merchandise;
- availability constraints and price volatility in the raw materials used to manufacture our products;
- interruptions of the flow of our merchandise from international manufacturers causing disruptions in our supply chain;
- our sourcing a significant amount of our products from China;
- shortages of inventory, delayed shipments to our e-Commerce customers and harm to our reputation due to difficulties or shut-down of our distribution facilities (including as a result of COVID-19);
- our reliance upon independent third-party transportation providers for substantially all of our product shipments;
- our growth strategy;
- our leasing substantial amounts of space;
- our failure to find store employees that reflect our brand image and embody our culture;
- our reliance on third-parties for the provision of certain services, including distribution and real estate management;
- our dependence upon key executive management;

- our reliance on information systems;
- system security risk issues that could disrupt our internal operations or information technology services;
- unauthorized disclosure of sensitive or confidential information, whether through a breach of our computer system or otherwise;
- our failure to comply with federal and state laws and regulations and industry standards relating to privacy, data protection, advertising and consumer protection;
- payment-related risks that could increase our operating costs or subject us to potential liability;
- claims made against us resulting in litigation;
- changes in laws and regulations applicable to our business;
- regulatory actions or recalls arising from issues with product safety;
- our inability to protect our trademarks or other intellectual property rights;
- our substantial indebtedness and lease obligations;
- restrictions imposed by our indebtedness on our current and future operations;
- changes in tax laws or regulations or in our operations that may impact our effective tax rate;
- the possibility that we may recognize impairments on long-lived assets;
- our failure to maintain adequate internal controls; and
- the threat of war, terrorism or other catastrophes that could negatively impact our business.

We derive many of our forward-looking statements from our operating budgets and forecasts, which are based upon many detailed assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and, it is impossible for us to anticipate all factors that could affect our actual results. Important factors that could cause actual results to differ materially from our expectations, or cautionary statements, are disclosed under the sections entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this prospectus. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements as well as other cautionary statements that are made from time to time in our other SEC filings and public communications. You should evaluate all forward-looking statements made in this prospectus in the context of these risks and uncertainties.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our operations in the way we expect. The forward-looking statements included in this prospectus are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise.

USE OF PROCEEDS

We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders, including any shares sold by the selling stockholders in connection with the exercise of the underwriters' option to purchase additional shares. The expenses of the offering, not including the underwriting discount, are estimated at approximately $6.0 million. As of May 1, 2021, $3.8 million of these expenses have been paid by us and $2.2 million of estimated expenses are payable by us. See "Principal and Selling Stockholders."

DIVIDEND POLICY

We currently intend to retain all available funds and any future earnings to fund the development and growth of our business and to repay indebtedness, and therefore we do not anticipate paying any cash dividends in the foreseeable future. Additionally, because we are a holding company, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions to us, including restrictions under the terms of the agreements governing our indebtedness. See "Description of Certain Indebtedness." Any future determination to pay dividends will be at the discretion of our board of directors, subject to compliance with covenants in current and future agreements governing our indebtedness, and will depend upon our results of operations, financial condition, capital requirements and other factors that our board of directors deems relevant.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of May 1, 2021 on:

- an actual basis;
- a pro forma basis to give effect to (i) the Reorganization and the Stock Split, (ii) cash proceeds, net of original issue discount received from the New Term Loan Credit Agreement of $346.5 million, (iii) the Special Cash Distribution of $168.3 million from cash on hand and $131.7 million of cash from borrowings under the New Term Loan Credit Agreement, (iv) repayment of the Original Term Loan Credit Agreement of $207.5 million and a $2.1 million prepayment penalty, with borrowings under the New Term Loan Credit Agreement, and (v) the payment of fees, expenses and premiums of $6.0 million in connection with the foregoing and $0.7 million in connection with the Amended ABL Facility, as if they had occurred on May 1, 2021; and
- a pro forma as adjusted basis to further reflect the payment by us of estimated expenses of $2.2 million related to this offering which have not been paid as of May 1, 2021, described under "Use of Proceeds."

You should read the following table in conjunction with the sections entitled "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of May 1, 2021		
	Actual	Pro Forma	Pro Forma As Adjusted
	(dollars in thousands) (unaudited)		
Cash and cash equivalents	$190,782	$ 21,079	$ 18,907
Long-term Debt:			
Amended ABL Facility(1)	—	—	—
Original Term Loan Credit Agreement(2)	202,036	—	—
New Term Loan Credit Agreement(3)	—	340,509	340,509
Total long-term debt	202,036	340,509	340,509
Stockholder's deficit:(4)			
Common shares, $0.01 par value; 1,000 shares authorized, issued and outstanding (actual); 1,000,000,000 shares authorized, 110,000,000 shares issued and outstanding (pro forma and pro forma as adjusted)	—	1,100	1,100
Preferred stock, $0.01 par value; no shares authorized, issued and outstanding (actual); 5,000,000 shares authorized, no shares issued and outstanding (pro forma and pro forma as adjusted)	—	—	—
Additional paid-in capital	50,105	—	—
Accumulated deficit	(60,561)	(319,045)	(321,217)
Accumulated other comprehensive income	203	203	203
Total stockholder's deficit	(10,253)	(317,742)	(319,914)
Total capitalization	$191,783	$ 22,767	$ 20,595

(1) The Original ABL Facility (as defined below) was amended on June 14, 2021 to, among other things, effect an increase in aggregate commitments (subject to a borrowing base) from $70.0 million to $150.0 million. As of May 1, 2021, availability under the Original ABL Facility was $65.5 million, which reflects no borrowings and $4.5 million of standby letters of credit issued and outstanding. As of June 23, 2021, availability under the Amended ABL Facility was $145.1 million, which reflects no borrowings and $4.9 million of standby letters of credit issued and outstanding. In connection with the Amended ABL Facility, we paid financing costs of approximately $0.7 million. Borrowings under the Amended ABL Facility are treated as short-term debt obligations.

(2) Represents the outstanding aggregate principal amount less the unamortized original issue discount and financing costs of approximately $5.4 million. On June 14, 2021, we repaid and terminated the Original Term Loan Credit Agreement with borrowings under the New Term Loan Credit Agreement.
(3) Represents the outstanding aggregate principal amount less the unamortized original issue discount and financing costs of approximately $9.5 million.
(4) The assumption by Torrid of the obligations of Torrid Holding LLC under the related party promissory notes due to Torrid will result in the legal cancellation of such notes, but will have no impact on our capitalization as the related party promissory notes, including the $300M Related Party Promissory Note Receivable (as defined herein) relating to the Special Cash Distribution, were reflected as a distribution for accounting purposes in the historical financial statements of Torrid Parent Inc. For more information, see "Certain Relationships and Related Party Transactions—Related Party Promissory Notes" and Note 11 to our audited consolidated financial statements included elsewhere in this prospectus.

The information set forth above excludes (i) 8,550,000 shares of common stock of Torrid Holdings Inc. reserved for future grants under the LTIP and (ii) 3,650,000 additional shares of common stock of Torrid Holdings Inc. reserved for future issuance under the ESPP, as well as, in each case, any shares of common stock that become available pursuant to the provisions of such plans. See "Executive Compensation—Long-Term Incentive Awards."

SELECTED HISTORICAL FINANCIAL AND OTHER DATA

The following tables present our selected historical financial and other data as of and for the periods indicated. We have derived the selected consolidated statements of operations data for the fiscal years ended February 2, 2019, February 1, 2020 and January 30, 2021 from our audited consolidated financial statements for such periods included elsewhere in this prospectus. We have derived the selected consolidated statements of operations data for the fiscal years ended January 30, 2016, January 28, 2017 and February 3, 2018 from our audited consolidated financial statements for such periods not included in this prospectus.

We have derived the selected consolidated statements of operations flows data for the three months ended May 2, 2020 and May 1, 2021 from our unaudited condensed consolidated financial statements included elsewhere in this prospectus. The unaudited consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal and recurring adjustments, necessary for a fair statement of the information set forth herein. Interim financial results are not necessarily indicative of results for the full year or any future reporting period.

The selected historical financial and other data presented below should be read in conjunction with our consolidated financial statements and the related notes thereto, included elsewhere in this prospectus, and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our selected historical financial and other data may not be indicative of our future performance.

	Fiscal Year Ended						Three Months Ended	
	January 30, 2016	January 28, 2017	February 3, 2018	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
	(dollars in thousands, except where noted)							
Statements of Operations Data:								
Net sales	$ 440,722	$ 640,172	$ 804,293	$ 909,147	$1,036,984	$ 973,514	$156,477	$325,747
Cost of goods sold	267,755	388,517	505,998	586,121	640,909	643,215	115,535	180,815
Gross profit	172,967	251,655	298,295	323,026	396,075	330,299	40,942	144,932
Selling, general and administrative expenses	128,010	221,505	233,238	169,832	253,378	222,093	6,858	109,913
Impairment charges	198,784	3,214	1,449	698	—	—	—	—
Marketing expenses	24,239	34,051	43,201	48,774	65,704	51,382	14,036	9,525
(Loss) income from operations[1]	(178,066)	(7,115)	20,407	103,722	76,993	56,824	20,048	25,494
Interest expense	343	482	650	1,053	16,493	21,338	6,094	4,624
Interest income, net of other expense (income)	117	(222)	(288)	(85)	(202)	(42)	133	(109)
(Loss) income before provision for income taxes	(178,526)	(7,375)	20,045	102,754	60,702	35,528	13,821	20,979
(Benefit) provision for income taxes	(14,742)	21,722	19,210	16,042	18,833	10,991	1,552	8,054
Net (loss) income	$ (163,784)	$ (29,097)	$ 835	$ 86,712	$ 41,869	$ 24,537	$ 12,269	$ 12,925
Other Financial and Operating Data:								
Adjusted EBITDA[2]	$ 35,059	$ 86,004	$ 99,826	$ 96,985	$ 131,999	$ 100,802	$ (8,198)	$ 75,711
Adjusted EBITDA margin[2]	8%	13%	12%	11%	13%	10%	(5%)	23%
Net cash provided by operating activities	46,867	58,955	48,349	115,092	99,090	151,821	7,192	73,834
Capital expenditures	(40,551)	(59,688)	(54,118)	(40,507)	(26,333)	(11,570)	(6,076)	(2,786)
Free Cash Flow[2]	6,316	(733)	(5,769)	74,585	72,757	140,251	1,116	71,048
Comparable sales[3]	33%	25%	12%	10%	13%	(7%)	(38%)	108%
Active customers (# in millions)	1.5	2.0	2.5	3.0	3.4	3.2	3.2	3.4
Store count (#)	361	455	547	577	607	608	607	608

(1) The results of operations were impacted by share-based compensation expense related to revaluing our liability-classified incentive units.

(2) Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow are supplemental measures of our operating performance that are neither required by, nor presented in accordance with, GAAP and our calculations thereof may not be comparable to similarly titled measures reported by other companies. Adjusted EBITDA represents GAAP net (loss) income plus interest expenses less interest (income), net of other (income) expense, plus (benefit) provision for income taxes, depreciation and amortization (also known as "EBITDA"), and share-based compensation, non-cash deductions and charges, other expenses, the duplicative and start-up costs associated with the West Jefferson, Ohio, distribution center, an adjustment for the Transition Services Agreement (as defined herein) and the elimination of Lovesick test concept EBITDA. Adjusted EBITDA margin represents Adjusted EBITDA as a percentage of our total net sales. Free Cash Flow represents net cash provided by operating activities less capital expenditures. We believe Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow facilitate operating performance comparisons from period to period by isolating the effects of certain items that vary from period to period without any correlation to ongoing operating performance. We also use Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow as three of the primary methods for planning and forecasting the overall expected performance of our business and for evaluating on a quarterly and annual basis actual results against such expectations. Further, we recognize Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow as commonly used measures in determining business value and, as such, use them internally to report and analyze our results and we additionally use Adjusted EBITDA as a benchmark to determine certain non-equity incentive payments made to executives. These measures have limitations as analytical tools and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP.

Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow have limitations as analytical tools. These measures are not measurements of our financial performance under GAAP and should not be considered in isolation or as alternatives to or substitutes for net income (loss), income (loss) from operations or any other performance measures determined in accordance with GAAP or as alternatives to cash flows from operating activities as a measure of our liquidity. Our presentation of Adjusted EBITDA, Adjusted EBITDA margin and Free Cash Flow should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

(3) The computation of comparable sales includes results from stores that were temporarily closed due to COVID-19 in 2020.

The following table provides a reconciliation of net income to Adjusted EBITDA for the periods presented:

	Fiscal Year Ended						Three Months Ended	
	January 30, 2016	January 28, 2017	February 3, 2018	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
	(dollars in thousands)							
Net (loss) income	$(163,784)	$ (29,097)	$ 835	$ 86,712	$ 41,869	$ 24,537	$ 12,269	$12,925
Interest expense	343	482	650	1,053	16,493	21,338	6,094	4,624
Interest income, net of other expense (income)	117	(222)	(288)	(85)	(202)	(42)	133	(109)
(Benefit) provision for income taxes	(14,742)	21,722	19,210	16,042	18,833	10,991	1,552	8,054
Depreciation and amortization(A)	13,691	16,801	22,002	26,845	30,208	33,072	8,375	8,569
Share-based compensation(B)	—	—	41,187	(38,308)	11,993	7,791	(38,515)	39,779
Non-cash deductions and charges(C)	201,136	70,790	4,844	2,466	4,435	1,984	896	35
Other expenses(D)	1,545	(95)	10,105	89	2,510	1,131	998	1,834
Ohio Distribution Center costs(E)	—	—	—	2,171	5,860	—	—	—
Adjustment for Transition Services Agreement (F)	(4,307)	—	—	—	—	—	—	—
Lovesick test concept EBITDA(G)	1,060	5,623	1,281	—	—	—	—	—
Adjusted EBITDA	$ 35,059	$ 86,004	$ 99,826	$ 96,985	$ 131,999	$ 100,802	$ (8,198)	$75,711

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount that are reflected in interest expense and other, net.

(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.

(C) Non-cash deductions and charges includes (i) losses on property and equipment disposals, (ii) non-cash asset impairment charges in 2016 and 2018 and (iii) the net impact of non-cash rent expense.

(D) Other expenses represent non-routine expenses, including (i) the reversal of legal settlement expense in 2016, (ii) IPO-related transaction fees and (iii) certain expenses related to store closures in 2018; and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.

(E) Represents the duplicative and start-up costs associated with the West Jefferson, Ohio distribution center leased in 2018. This isolates the effect of incurring costs related to the West Jefferson, Ohio distribution center, which was not yet fully operational in 2019, while also incurring distribution and e-Commerce fulfillment costs charged to us by Hot Topic Inc. (“Hot Topic”) under the various service agreements.

(F) Represents the impact of charges under the Transition Services Agreement that would have been paid to Hot Topic by Torrid had the Transition Services Agreement been in place during the entirety of 2014 and 2015.

(G) Represents the elimination of EBITDA, adjusted for non-cash asset impairment charges and the net impact of non-cash rent expense, attributable to the Lovesick test concept, a young women’s plus-size retail concept that in January 2017 we decided to close.

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

The following discussion summarizes the significant factors affecting the consolidated operating results, financial condition, liquidity and cash flows of our Company as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the consolidated financial statements and the related notes thereto included elsewhere in this prospectus. This discussion contains forward-looking statements that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements as a result of various factors, including those discussed below and elsewhere in this prospectus, particularly in the section entitled "Risk Factors."

Overview

Torrid is the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America by net sales. We grew our net sales by 8% CAGR between 2017 and 2020, making us among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market. We served 3.2 million active customers and generated net sales of $974 million in 2020. Our proprietary product offering delivers a superior fit for the curvy woman that makes her love the way she looks and feels. We offer a broad assortment of high quality products including tops, denim, dresses, intimates, activewear, footwear and accessories. Our style is unapologetically youthful and sexy. We believe our customer values the appeal and versatility of our curated product assortment that helps her look her best for any occasion, including weekend, casual, work and dressy, all at accessible price points. We specifically design for stylish plus-size women and are maniacally focused on fit because fit is the highest priority for them, according to a consumer study we commissioned. Based on the same study, plus-size consumers consistently rank our fit as #1 among our peers, which contributes to our leading NPS of 55 versus the peer average score of 30. Our consistent fit contributed to a return rate of only 9% for e-Commerce purchases in 2020, whereas return rates for e-Commerce purchases generally can be as high as 30%, according to Optoro's research. Through our product and brand experience we connect with customers in a way that other brands, many of which treat plus-size customers as an after-thought, have not.

Key Financial and Operating Metrics

We use the following metrics to assess the progress of our business, inform how we allocate our time and capital, and assess the near-term and longer-term performance of our business.

	Year Ended			Three Months Ended	
	(in thousands, except net sales per active customer, number of stores and percentages)				
	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
Active customers (as of end of period)(A)	3,038	3,364	3,182	3,238	3,448
Net sales per active customer(A)	$ 299	$ 308	$ 306	$ 291	$ 331
Comparable sales(B)	10%	13%	(7%)	(38%)	108%
Number of stores (as of end of period)	577	607	608	607	608
Adjusted EBITDA	$ 96,985	$ 131,999	$ 100,802	$(8,198)	$75,711
Adjusted EBITDA margin	11%	13%	10%	(5%)	23%

(A) Active customers and net sales per active customer calculated on a preceding four quarters basis.
(B) The computation of comparable sales includes results from stores that were temporarily closed due to COVID-19.

Adjusted EBITDA and Adjusted EBITDA margin are non-GAAP measures. See the section captioned "Prospectus Summary—Summary Consolidated Historical Financial and Other Data" for information regarding our use of Adjusted EBITDA and its reconciliation to net income.

Active Customers. We define an active customer as a distinct, identifiable customer who has completed at least one purchase transaction either in-store or online in the preceding four quarters. We are able to identify the vast majority of our customers primarily through our robust loyalty program, which gives us access to extensive customer and sales data. We have improved our customer tracking capabilities and have grown the proportion of our net sales attributable to active customers over time. The proportion of net sales that we are able to attribute to active customers was 94% in 2018, 96% in 2019, 98% in 2020 and 97% for the three months ended May 1, 2021. As a result, historical year-over-year growth in active customers may factor in increases attributable to our improved capabilities. We view the number of active customers as a key indicator of our growth, the reach of our e-Commerce and stores platform, the value proposition and consumer awareness of our brand and our customers' desire to purchase our products. The number of active customers has grown over time as we have acquired new customers and retained previously acquired customers. We expect to continue to drive growth in active customers with new customer acquisition and retention efforts.

Net Sales per Active Customer. We define net sales per active customer for any given period as the net sales in the preceding four quarters, divided by the total number of active customers at the end of that period. We view net sales per active customer as a key indicator of our customers' purchasing patterns, including their initial and repeat purchase behavior and intend to closely monitor this metric going forward. We expect net sales per active customer to increase modestly over the long term as we invite our customer to spend more with us and capture a larger share of her total apparel spend. We anticipate that a portion of such increase may be offset by net sales from new customers, which tend to be lower on a per-customer basis in their initial purchase year than the annual spend per repeat active customer.

Comparable Sales. We define comparable sales for any given period as the sales of our e-Commerce operations and stores that we have included in our comparable sales base during that period. We include a store in our comparable sales base after it has been open for 15 full fiscal months. If a store is closed during a fiscal year, it is only included in the computation of comparable sales for the full fiscal months in which it was open. The computation of comparable sales includes results from stores that were temporarily closed due to COVID-19. Partial fiscal months are excluded from the computation of comparable sales. Comparable sales allow us to evaluate how our unified commerce business is performing exclusive of the effects of new store openings. We apply current year foreign currency exchange rates to both current year and prior year comparable sales to remove the impact of foreign currency fluctuation and achieve a consistent basis for comparison. Comparable sales allow us to evaluate how our unified commerce business is performing exclusive of the effects of non-comparable sales.

Number of Stores. Store count reflects all stores open at the end of a reporting period. In connection with opening new stores, we incur pre-opening costs, which primarily consist of payroll, travel, training, marketing, initial opening supplies, costs of transporting initial inventory and fixtures to store locations, and occupancy costs incurred from the time of possession of a store site to the opening of that store. These pre-opening costs are included in our selling, general and administrative expenses and are expensed as incurred.

Adjusted EBITDA and Adjusted EBITDA Margin. Adjusted EBITDA and Adjusted EBITDA margin are non-GAAP measures. See the section captioned "Prospectus Summary—Summary Consolidated Historical Financial and Other Data" for information regarding our use of Adjusted EBITDA and its reconciliation to net income. We present these measures as we believe they are frequently used by securities analysts, investors and other interested parties to evaluate companies in our industry and we use them internally as benchmarks to compare our performance to that of our competitors. We believe Adjusted EBITDA and Adjusted EBITDA margin facilitate operating performance comparisons from period to period by isolating the effects of certain items that vary from period to period without any correlation to ongoing operating performance. We also use Adjusted EBITDA and Adjusted EBITDA margin as two of the primary methods for planning and forecasting the overall expected performance of our business and for evaluating on a quarterly and annual basis actual results against such expectations. Further, we recognize Adjusted EBITDA and Adjusted EBITDA margin as commonly used measures in determining business value and, as such, use them internally to report and analyze our results and we additionally use Adjusted EBITDA as a benchmark to determine certain non-equity incentive payments made to executives.

Adjusted EBITDA has limitations as an analytical tool and should not be considered either in isolation or as a substitute for net income or other data prepared in accordance with GAAP. Among other limitations, Adjusted EBITDA does not reflect:

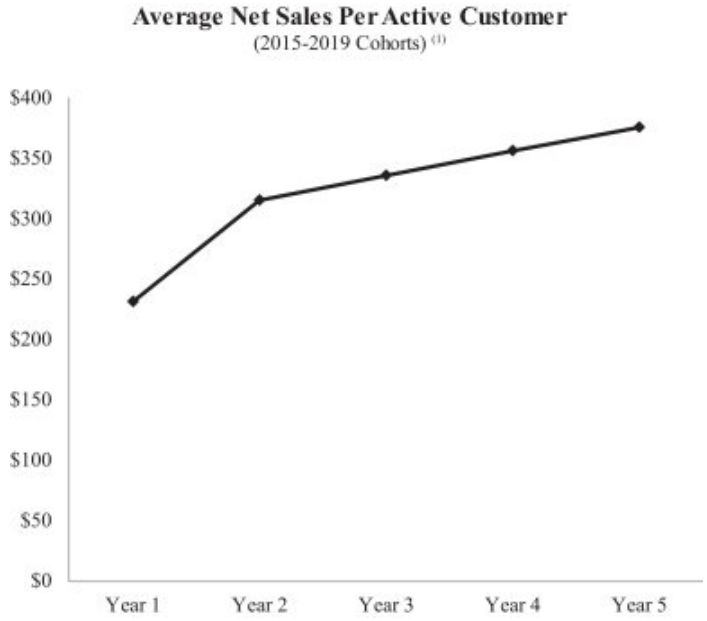
- interest expense;
- interest income, net of other (income) expense;
- provision for income taxes;
- depreciation and amortization;
- share-based compensation;
- non-cash deductions and charges;
- other expenses; and
- duplicative Ohio distribution center costs.

Factors Affecting Our Performance

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

Customer Cohort Spend Over Time. We define a customer cohort as all of our customers who made their initial purchase in a given year, across all channels. We believe the evolution of spend among our customer cohorts demonstrates our increasing value proposition to our customers as they continue to shop with us over time. Our ability to deliver a life-changing customer experience has resulted in a net sales per active customer trajectory that is consistent across cohorts. Going forward, we intend to broaden our product assortment and improve our in-store and online experience to deepen our relationships with our customers and drive net sales per active customer.

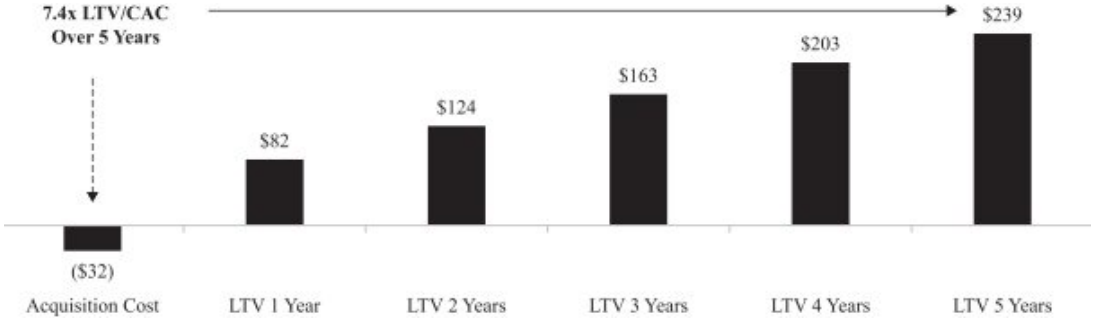
For the 2015 cohort, which has the longest historical record, net sales per active customer was $262 in Year 1, defined as the first 12 months following and including their initial purchase. In their second year, the 2015 cohort's net sales per active customer was $342, or 1.3 times the spending in their first year. This number continues to grow as the cohorts mature, as illustrated by the 2015 cohort's net sales per active customer reaching $375 in Year 5, or 1.4 times the Year 1 value. This trend has been consistent throughout our history across cohorts. Even in 2020, when sales declined due to store closures related to COVID-19, each cohort's net sales per active customer continued to expand. We expect our cohorts' average net sales per active customer, as shown in the chart below, to continue to grow as our cohorts mature and we continue to deepen our relationships with them.



(1) Existing customers, whom we define as identified customers who have purchased from us at least once before.

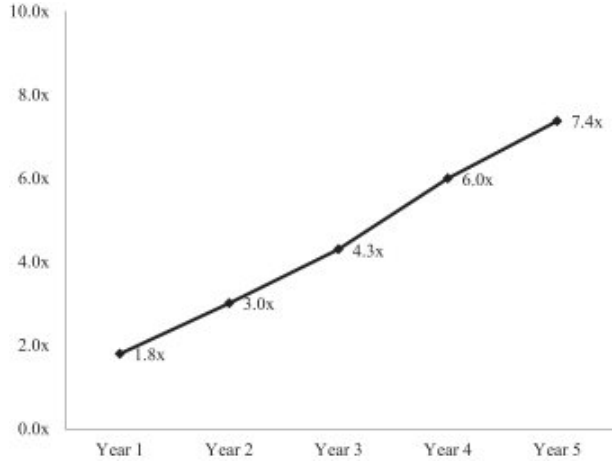
Efficiency of Customer Acquisition. To continue to grow our business profitably, we intend to acquire new customers and retain our repeat customers at a reasonable cost. We use a variety of brand and performance marketing channels to acquire new customers and leverage our store footprint of 608 stores as of May 1, 2021. It is important to maintain reasonable costs for these marketing efforts relative to the net sales and profit we expect to derive from customers. Failure to effectively attract customers on a cost-efficient basis would adversely impact our profitability and operating results.

To measure the effectiveness of our marketing spend, we analyze customer acquisition cost (also known as CAC), and customer lifetime value (also known as LTV). We manage CAC methodically, continually using data and internal return on advertising spend targets to optimize our acquisition strategy. We measure how profitably we acquire new customers by comparing the LTV of a particular customer cohort with the CAC attributable to such cohort. To illustrate our successful customer acquisition strategy, we compare the LTV of the 2015 cohort to the CAC for those customers. While performance may vary across cohorts, we chose the 2015 cohort because it provides a broad amount of historical data. As illustrated in the chart below, this cohort generated a contribution profit in their first year significantly exceeding our acquisition cost, which demonstrates our ability to achieve rapid payback and profitability. Furthermore, the LTV of the 2015 cohort has increased over time driven by repeat purchases and rising contribution profit. As a result, the LTV of the 2015 customer cohort was approximately $239 after 5 years, 7.4 times the $32 cost of acquiring those customers, which is a testament to our ability to acquire customers efficiently and profitably.



We have also provided the average LTV to CAC ratio for the 2015, 2016, 2017, 2018 and 2019 cohorts across one-year, two-year, three-year, four-year and five-year periods below to illustrate the effectiveness of our customer acquisition over time. We believe that the trend reflected by this chart is illustrative of the value of our customer base. As we increase our active customer base, however, we expect to spend more in marketing costs in aggregate to acquire new customers, and we may experience changes in customer retention or purchasing patterns, any of which could have a significant negative impact on our net sales and operating results.

Average LTV/CAC
(2015-2019 Cohorts) (1)



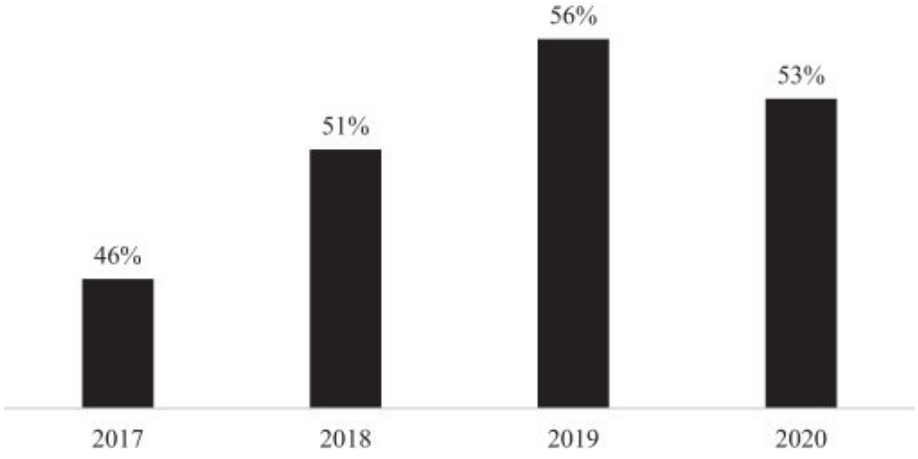
(1) Represents average LTV / CAC across 2015-2019 customer cohorts, weighted by number of customers acquired

Our annual CAC increased from $32 in 2015 to $49 in 2019 as we increased our marketing investments, particularly in performance marketing as we continue to focus on driving higher brand awareness and conversion. Going forward, we expect CAC to fluctuate as we tailor and adjust our marketing strategy based on internal return on advertising spend targets. For example, as a result of consumer behavior changes related to the ongoing COVID-19 pandemic, our CAC declined 7% from $49 in 2019 to $46 in 2020. We expect to continue to generate a profit from our customer cohorts that significantly exceeds the acquisition cost within the first year of purchase and continues to grow over time as our customers engage in repeat purchases.

Customer Retention. Our success is impacted not only by efficient and profitable customer acquisition, but also by our ability to retain customers and encourage repeat purchases. Repeat customers, whom we define as identified customers who have purchased from us at least once before accounted for approximately 72%, 78%, and 83% of net sales in 2018, 2019, and 2020, respectively, with repeat customers placing more orders annually than new customers. We believe these increasing metrics are reflective of our ability to engage and retain our customers through our compelling merchandise offering and shopping experience, as well as our differentiated marketing. Furthermore, we believe our overall net sales retention exceeds these figures, as we also retain a portion of sales to cash-pay and other unknown customers. The increasing share of our net sales from repeat customers reflects our customer loyalty and the net sales retention behavior we see in our cohorts. We calculate net sales retention on an annual basis as net sales attributable to the prior year's identifiable customer cohorts, divided by the prior year's total net sales attributable to identifiable customer cohorts. In 2020, we retained 82% of the prior year's identifiable customers' net sales. Our net sales retention is supported by the retention of substantially all sales from customer cohorts after the second year as our loyal customers make purchases more frequently and spend an increasing amount on our platform. While the net sales retention of the prior year's identifiable customers' net sales was down from 96% in 2019 due to the COVID-19 pandemic, we expect net sales retention to recover in future periods. We believe the trends reflected by these cohorts are illustrative of the value of our customer base; however, changes in customer retention and purchasing patterns could have a significant negative impact on our net sales and operating results.

Customer Migration from Single to Omni-channel. We have a history of converting customers from single-channel customers to omni-channel customers, defined as active customers who shopped both online and in-store within the last twelve months. Customers that shop across multiple channels purchase from us more frequently and, spent approximately 3.2 times more per year than our single-channel customer. As illustrated in the chart below, the share of net sales generated by omni-channel customers has increased from 51% in 2018 to 56% in 2019. While this percentage declined slightly to 53% in 2020 as a result of the temporary store closures caused by the COVID-19 pandemic, we expect the omni-channel penetration to recover in future periods.

Share of Net Sales Generated by Omni-Channel Customers



Overall Economic Trends. Consumer purchases of clothing generally remain constant or may increase during stable economic periods and decline during recessionary periods and other periods when disposable income is adversely affected. Consequently, our results of operations during any given period are often impacted by the overall economic conditions in the markets which we operate.

Demographic Changes. Our business has experienced growth over recent periods due, in part, to an increase in the plus-size population. Slower or negative growth in this demographic, in particular among women ages 25 to 40, specific to certain geographic markets, income levels or overall, could adversely affect our results of operations.

Growth in Brand Awareness. We intend to continue investing in our brand, with a specific focus on growing brand awareness, engagement, and conversion through targeted investments in performance and brand marketing. Our aided brand awareness among U.S. plus-size women who purchased apparel in the past 12 months was 31% in April 2021 according to a third party survey we commissioned. We have made significant historical investments to strengthen the Torrid brand through our marketing efforts, brand partnerships, events and expansion of our social media presence. If we fail to cost-effectively promote our brand or convert impressions into new customers, our net sales growth and profitability may be adversely affected.

Impact of COVID-19. The COVID-19 pandemic has caused general business disruption worldwide. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations, cash flows, and financial condition will depend on future developments that are uncertain. As a result of the COVID-19 pandemic, we temporarily closed our headquarters, distribution center and retail stores, required our employees and contractors to work remotely, and implemented travel restrictions. The operations of our suppliers and manufacturers and behaviors of customers have likewise been altered. While the duration and extent of the COVID-19 pandemic depends on future developments that cannot be accurately predicted at this time, such as the extent and effectiveness of containment actions, it has already had an adverse effect on the global economy and the ultimate societal and economic impact of the COVID-19 pandemic remains unknown.

Investments. We have invested significantly to strengthen our business, including augmenting leadership across our organization and enhancing our infrastructure and technology, and have delivered significant growth as a result. We believe that we have an opportunity to continue to achieve significant growth due to our large addressable women's plus-size apparel market, the untapped spend potential within this market, and the relatively low unaided awareness of our brand. In order to realize such growth, we anticipate that our operating expenses will grow as we continue to increase our spending on advertising and marketing and hire additional personnel primarily in marketing, product design and development, merchandising, technology, operations, customer service and general and administrative functions. We will also continue to selectively expand our store footprint and make investments to improve the customer experience both in-store and online. We believe that such investments will increase the number and loyalty of our customers and, as a result, yield positive financial performance in the long term.

Seasonality. While seasonality frequently impacts businesses in the retail sector, our business is generally not seasonal. Accordingly, our net sales do not fluctuate as significantly as those of other brands and retailers from quarter to quarter and any modest seasonal effect does not significantly change the underlying trends in our business. Additionally, we do not generate an outsized share of our net sales or Adjusted EBITDA during the holiday season. Typically, our Adjusted EBITDA generation is strongest in the first half of the year as we benefit from more favorable merchandise margins, lower advertising and lower shipping expenses relative to the second half of the year. The lack of net sales seasonality provides structural cost advantages relative to peers, including reduced staffing cyclicality and seasonal distribution capacity needs.

Components of Our Results of Operations

Net Sales. Net sales reflects our revenues from the sale of our merchandise, shipping and handling revenue received from e-Commerce sales and gift card breakage income, less returns, discounts and loyalty points/

awards. Revenue from our stores is recognized at the time of sale and revenue from our e-Commerce channel is recognized upon shipment of the merchandise to the home of the customer; except in cases where the merchandise is shipped to a store and revenue is recognized when the customer retrieves the merchandise from the store. Net sales are impacted by the size of our active customer base, product assortment and availability, marketing and promotional activities and the spending habits of our customers. Net sales are also impacted by the migration of single-channel customers (i.e., customers shopping only in-store or online) to omni-channel customers (i.e., customers shopping both in-store and online), who on average spend significantly more than single-channel customers in a given year.

Gross Profit. Gross profit is equal to our net sales less cost of goods sold. Our cost of goods sold includes merchandise costs, freight, inventory shrinkage, payroll expenses associated with the merchandising department, distribution center expenses and store occupancy expenses, including rent, common area maintenance charges, real estate taxes and depreciation. Merchandising payroll costs and store occupancy costs included within cost of goods sold are largely fixed and do not necessarily increase as volume increases. We review our inventory levels on an ongoing basis in order to identify slow-moving merchandise and generally use markdowns to clear that merchandise. The timing and level of markdowns are driven primarily by customer acceptance of our merchandise. The primary drivers of our merchandise costs include the raw materials, labor in the countries where we source our merchandise, customs duties, and logistics costs.

Selling, General and Administrative Expenses. Selling, general and administrative expenses include all operating costs not included in cost of goods sold or marketing expenses. Our historical revenue growth has been accompanied by increased selling, general and administrative expenses. For instance, we continue to make payroll investments to support our growth.

Marketing Expenses. We continue to make investments in marketing in an effort to grow and retain our active customer base and increase our brand awareness. Marketing expenses consist primarily of (i) targeted online performance marketing costs, such as retargeting, paid search/product listing advertising, and social media advertisements, (ii) store and brand marketing, public relations and photographic production designed to acquire, retain and remain connected to customers, (iii) direct mail marketing costs and (iv) payroll and benefits expenses associated with our marketing team.

Interest Expense. Interest expense consists primarily of interest expense and other fees associated with our Original ABL Facility and Original Term Loan Credit Agreement. On June 14, 2021, we repaid and terminated the Original Term Loan Credit Agreement with borrowings under the New Term Loan Credit Agreement and amended our Original ABL Facility.

Provision for Income Taxes. Our provision for income taxes consists of an estimate of federal and state income taxes based on enacted federal and state tax rates, as adjusted for allowable credits, deductions and uncertain tax positions.

Results of Operations

Three Months Ended May 1, 2021 Compared to Three Months Ended May 2, 2020

The following table summarizes our consolidated results of operations for the periods indicated (dollars in thousands):

	Three Months Ended			
	May 2, 2020	% of Net Sales	May 1, 2021	% of Net Sales
Net sales	$ 156,477	100.0%	$ 325,747	100.0%
Cost of goods sold	115,535	73.8	180,815	55.5
Gross profit	40,942	26.2	144,932	44.5
Selling, general and administrative expenses	6,858	4.4	109,913	33.8
Marketing expenses	14,036	9.0	9,525	2.9
Income from operations	20,048	12.8	25,494	7.8
Interest expense	6,094	3.9	4,624	1.4
Interest income, net of other expense (income)	133	0.1	(109)	(0.0)
Income before provision for income taxes	13,821	8.8	20,979	6.4
Provision for income taxes	1,552	1.0	8,054	2.4
Net income	$ 12,269	7.8%	$ 12,925	4.0%

The following table provides a reconciliation of net income to Adjusted EBITDA for the periods presented (dollars in thousands):

	Three Months Ended	
	May 2, 2020	May 1, 2021
Net income	$ 12,269	$ 12,925
Interest expense	6,094	4,624
Interest income, net of other expense (income)	133	(109)
Provision for income taxes	1,552	8,054
Depreciation and amortization(A)	8,375	8,569
Share-based compensation(B)	(38,515)	39,779
Non-cash deductions and charges(C)	896	35
Other expenses(D)	998	1,834
Adjusted EBITDA	$ (8,198)	$ 75,711

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount that are reflected in interest expense.
(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.
(C) Non-cash deductions and charges includes losses on property and equipment disposals and the net impact of non-cash rent expense.
(D) Other expenses represent non-routine expenses, including IPO-related transaction fees and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.

Net Sales

Net sales increased $169.3 million, or 108.2%, to $325.7 million for the three months ended May 1, 2021, from $156.5 million for the three months ended May 2, 2020. This increase was primarily driven by an increase in orders placed and an increase in average order value relative to the three months ended May 2, 2020, which were impacted by disruption caused by the COVID-19 pandemic. The increase in net sales was also as a result of

temporary store closures due to the COVID-19 pandemic during the three months ended May 2, 2020. Active customers increased 0.2 million, or 6.5%, to 3.4 million as of May 1, 2021, from 3.2 million as of May 2, 2020. Net sales per active customer increased by 14% from $291 as of May 2, 2020 to $331 as of May 1, 2021. The total number of stores we operate increased by 1 store, or 0.1%, to 608 stores as of May 1, 2021, from 607 stores as of May 2, 2020.

Gross Profit

Gross profit for the three months ended May 1, 2021 increased $104 million, or 254%, to $144.9 million, from $40.9 million for the three months ended May 2, 2020. This increase was primarily due to higher net sales volumes that drove a $103.0 million increase in merchandise margin. Gross profit as a percentage of net sales increased 18.3% to 44.5% for the three months ended May 1, 2021 from 26.2% for the three months ended May 2, 2020. This increase was primarily driven by higher merchandise margin rate, lower distribution costs and leverage of our store occupancy costs, store depreciation expense and merchandising payroll costs as a result of higher net sales volume. The higher merchandise margin rate was primarily driven by decreased promotional activity and write downs of inventory, partially offset by e-Commerce shipping cost increases.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the three months ended May 1, 2021 increased $103.1 million, or 1,502.7%, to $109.9 million, from $6.9 million for the three months ended May 2, 2020. The increase was primarily due to a $78.3 million increase in share-based compensation expense, increased performance bonuses of $14.3 million, increased store payroll costs of $7.3 million and a $3.1 million increase in other store operating costs. Selling, general and administrative expenses as a percentage of net sales increased by 29.4% to 33.8% for the three months ended May 1, 2021 from 4.4% for the three months ended May 2, 2020. This increase was driven by increased share-based compensation and performance bonuses, partially offset by leverage of store and e-Commerce order fulfillment payroll costs headquarters general and administrative expenses and other store operating costs as a result of higher net sales volume.

Marketing Expenses

Marketing expenses for the three months ended May 1, 2021 decreased $4.5 million, or 32.1%, to $9.5 million, from $14.0 million for the three months ended May 2, 2020. This decrease was primarily due to decreased spending on photographic production, direct mail printing and short film production, partially offset by increased online marketing initiatives. Marketing expenses as a percentage of net sales decreased by 6.1% to 2.9% during the three months ended May 1, 2021 from 9.0% during the three months ended May 2, 2020. This decrease was driven by leverage of our marketing expenses as a result of higher net sales volume and decreased spending on photographic production and artwork, direct mail printing and short film production.

Interest Expense

Interest expense was $4.6 million for the three months ended May 1, 2021, compared to $6.1 million for the three months ended May 2, 2020. The decrease was primarily due a decrease in the total borrowings outstanding related to the Original Term Loan Credit Agreement as of May 1, 2021 compared to May 2, 2020, and to a lesser extent, a decrease in the variable interest rate related to the Original Term Loan Credit Agreement.

Provision for Income Taxes

The provision for income taxes for the three months ended May 1, 2021 increased by $6.5 million to $8.1 million, from $1.6 million for the three months ended May 2, 2020. Our effective tax rate was 38.4% for the three months ended May 1, 2021 and 11.2% for the three months ended May 2, 2020. The change in the effective tax rate for the three months ended May 1, 2021, as compared to the three months ended May 2, 2020 was primarily due to the increase in the amount of non-taxable items associated with share-based compensation relative to income before provision for income taxes for the three months ended May 1, 2021.

2020 Compared to 2019

The following table summarizes our consolidated results of operations for the periods indicated (dollars in thousands):

	Fiscal Year Ended			
	February 1, 2020	% of Net Sales	January 30, 2021	% of Net Sales
Net sales	$1,036,984	100.0%	$ 973,514	100.0%
Cost of goods sold	640,909	61.8	643,215	66.1
Gross profit	396,075	38.2	330,299	33.9
Selling, general and administrative expenses	253,378	24.5	222,093	22.8
Marketing expenses	65,704	6.3	51,382	5.3
Income from operations	76,993	7.4	56,824	5.8
Interest expense	16,493	1.6	21,338	2.2
Interest income, net of other (income) expense	(202)	0.0	(42)	0.0
Income before provision for income taxes	60,702	5.8	35,528	3.6
Provision for income taxes	18,833	1.8	10,991	1.1
Net income	$ 41,869	4.0%	$ 24,537	2.5%

The following table provides a reconciliation of net income to Adjusted EBITDA for the periods presented (dollars in thousands):

	Fiscal Year Ended	
	February 1, 2020	January 30, 2021
Net income	$ 41,869	$ 24,537
Interest expense	16,493	21,338
Interest income, net of other (income) expense	(202)	(42)
Provision for income taxes	18,833	10,991
Depreciation and amortization(A)	30,208	33,072
Share-based compensation(B)	11,993	7,791
Non-cash deductions and charges(C)	4,435	1,984
Other expenses(D)	2,510	1,131
Ohio Distribution Center costs(E)	5,860	—
Adjusted EBITDA	$ 131,999	$ 100,802

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount that are reflected in interest expense.

(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.

(C) Non-cash deductions and charges includes losses on property and equipment disposals and the net impact of non-cash rent expense.

(D) Other expenses represent non-routine expenses, including IPO-related transaction fees and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.

(E) Represents the duplicative and start-up costs associated with our West Jefferson, Ohio distribution center leased in 2018. This isolates the effect of incurring costs related to our West Jefferson, Ohio distribution center, which was not yet fully operational in 2019, while also incurring distribution and e-Commerce fulfillment costs charged to us by Hot Topic under the various services agreements.

Net Sales

Net sales for 2020 decreased $63.5 million, or 6.1%, to $973.5 million, from $1,037.0 million for 2019. This decrease was primarily driven by a decline in orders placed and a decline in average order value as a result of the disruption caused by the COVID-19 pandemic. Active customers decreased 0.2 million, or 5.4%, to 3.2 million at the end of 2020, from 3.4 million at the end of 2019. Net sales per active customer decreased by 1% from $308 in 2019 to $306 in 2020. The total number of stores we operate increased by 1 store, or 0.1%, to 608 stores at the end of 2020, from 607 stores at the end of 2019.

Gross Profit

Gross profit for 2020 decreased $65.8 million, or 16.6%, to $330.3 million, from $396.1 million for 2019. This decrease was primarily due to lower net sales volumes that drove an $88.2 million decrease in merchandise margin. Gross profit as a percentage of net sales decreased 4.3% to 33.9% in 2020 from 38.2% in 2019. This decrease was driven by lower merchandise margin rate, partially offset by decreased store occupancy costs. The decrease in store occupancy costs was driven by negotiated rent concessions for certain store leases, including rent abatement during the period that those stores were closed due to COVID-19, as well as the transition to variable rent structures, many of which extend through 2021 and beyond. The lower merchandise margin rate was primarily driven by increases in promotional activity and e-Commerce shipping cost increases.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for 2020 decreased $31.3 million, or 12.3%, to $222.1 million, from $253.4 million for 2019. This decrease was primarily due to lower store payroll costs of $24.0 million as a result of temporary store closures due to the COVID-19 pandemic, a decrease of $4.2 million in share-based compensation expense and a decrease of $2.8 million in performance bonuses. Selling, general and administrative expenses as a percentage of net sales decreased by 1.7% to 22.8% in 2020 from 24.5% in 2019. This decrease was driven by decreased store payroll costs, share-based compensation and performance bonuses, partially offset by increases in other store operating costs and deleverage of our headquarters general and administrative expenses as a result of lower net sales volume.

Marketing Expenses

Marketing expenses for 2020 decreased $14.3 million, or 21.8%, to $51.4 million, from $65.7 million for 2019. This decrease was primarily due to decreased spending in response to the COVID-19 pandemic, including photographic production and direct mail printing, partially offset by increased online marketing initiatives. Marketing expenses as a percentage of net sales decreased by 1.0% to 5.3% in 2020 from 6.3% in 2019.

Interest Expense

Interest expense was $21.3 million for 2020, compared to $16.5 million for 2019. The increase was primarily due to the interest expense incurred in connection with borrowings of $260.0 million in June 2019 related to the Original Term Loan Credit Agreement.

Provision for Income Taxes

The provision for income taxes for 2020 decreased by $7.8 million to $11.0 million, from $18.8 million for 2019. Our effective tax rate remained substantially the same at 30.9% for 2020 as compared to 31.0% for 2019.

2019 Compared to 2018

The following table summarizes our consolidated results of operations for the periods indicated (dollars in thousands):

	Fiscal Year Ended			
	February 2, 2019	% of Net Sales	February 1, 2020	% of Net Sales
Net sales	$ 909,147	100.0%	$1,036,984	100.0%
Cost of goods sold	586,121	64.5	640,909	61.8
Gross profit	323,026	35.5	396,075	38.2
Selling, general and administrative expenses	170,530	18.7	253,378	24.5
Marketing expenses	48,774	5.4	65,704	6.3
Income from operations	103,722	11.4	76,993	7.4
Interest expense	1,053	0.1	16,493	1.6
Interest income, net of other (income) expense	(85)	0.0	(202)	0.0
Income before provision for income taxes	102,754	11.3	60,702	5.8
Provision for income taxes	16,042	1.8	18,833	1.8
Net income	$ 86,712	9.5%	$ 41,869	4.0%

The following table provides a reconciliation of net income to Adjusted EBITDA for the periods presented (dollars in thousands):

	Fiscal Year Ended	
	February 2, 2019	February 1, 2020
Net income	$ 86,712	$ 41,869
Interest expense	1,053	16,493
Interest income, net of other (income) expense	(85)	(202)
Provision for income taxes	16,042	18,833
Depreciation and amortization(A)	26,845	30,208
Share-based compensation(B)	(38,308)	11,993
Non-cash deductions and charges(C)	2,466	4,435
Other expenses(D)	89	2,510
Ohio Distribution Center costs(E)	2,171	5,860
Adjusted EBITDA	$ 96,985	$ 131,999

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount that are reflected in interest expense.

(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.

(C) Non-cash deductions and charges includes (i) losses on property and equipment disposals, (ii) non-cash asset impairment charges in 2018 and (iii) the net impact of non-cash rent expense.

(D) Other expenses represent non-routine expenses, including (i) IPO-related transaction fees and (ii) certain expenses related to store closures in 2018; and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.

(E) Represents the duplicative and start-up costs associated with our West Jefferson, Ohio distribution center leased in 2018. This isolates the effect of incurring costs related to our West Jefferson, Ohio distribution center, which was not yet fully operational in 2019, while also incurring distribution and e-Commerce fulfillment costs charged to us by Hot Topic under the various services agreements.

Net Sales

Net sales for 2019 increased $127.8 million, or 14.1%, to $1,037.0 million, from $909.1 million for 2018. This increase was primarily driven by growth in orders placed, and growth in average order value. Active customers increased 0.4 million, or 11%, to 3.4 million at the end of 2019, from 3.0 million at the end of 2018. Net sales per active customer increased by 3% from $299 in 2018 to $308 in 2019. Comparable sales increased 12.8%. The total number of stores we operate increased by 30 stores, or 5.2%, to 607 stores at the end of 2019, from 577 stores at the end of 2018.

Gross Profit

Gross profit for 2019 increased $73.0 million, or 22.6%, to $396.1 million, from $323.0 million for 2018. This increase was primarily due to higher net sales volumes that drove an $86.1 million increase in merchandise margin, partially offset by a $7.3 million increase in distribution center costs largely related to our West Jefferson, Ohio distribution center and a $4.6 million increase in store occupancy costs associated with new store openings. Gross profit as a percentage of net sales increased 2.7% to 38.2% in 2019 from 35.5% in 2018. This increase was driven by higher merchandise margin rate due to reduced promotional activity and leverage of our store occupancy costs, store depreciation expense and merchandising payroll costs as a result of higher net sales volume, partially offset by higher distribution center costs largely related to the duplicative costs associated with our West Jefferson, Ohio distribution center.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for 2019 increased $82.8 million, or 48.6%, to $253.4 million, from $170.5 million for 2018. This increase was primarily due to an increase in share-based compensation of $50.3 million, higher store and e-Commerce fulfillment payroll and other related operating costs of $13.6 million due to higher net sales volume and order fulfillment costs, an increase of $7.1 million in headquarters general and administrative costs and an increase of $10.4 million in performance bonuses. Selling, general and administrative expenses as a percentage of net sales increased by 5.8% to 24.5% in 2019 from 18.7% in 2018. This increase was driven by increased share-based compensation and performance bonuses, partially offset by leverage of our store and e-Commerce fulfillment payroll and other related operating as a result of higher net sales volume.

Marketing Expenses

Marketing expenses for 2019 increased $16.9 million, or 34.7%, to $65.7 million, from $48.8 million for 2018. This increase was primarily due to increased investments in (i) targeted online performance marketing such as comparison shopping engines and paid search/product listing advertising, (ii) social media advertising, (iii) photographic production and (iv) direct mail printing, designed to acquire, retain and remain connected to customers. Marketing expenses as a percentage of net sales increased by 0.9% to 6.3% in 2019 from 5.4% in 2018.

Interest Expense

Interest expense was $16.5 million for 2019, compared to $1.1 million for 2018. The increase was primarily due to the interest expense incurred in connection with borrowings of $260.0 million in June 2019 related to the Term Loan Credit Agreement (as defined below).

Provision for Income Taxes

The provision for income taxes for 2019 increased by $2.8 million to $18.8 million, from $16.0 million for 2018. Our effective tax rate was 31.0% for 2019 and 15.6% for 2018. The change in the effective tax rate for 2019 as compared to 2018 was primarily due to the increase in the amount of non-taxable items associated with share-based compensation relative to income before provision for income taxes for 2019.

Quarterly Results of Operations

The following table sets forth certain unaudited financial and operating information for each fiscal quarter during 2019 and 2020. The quarterly information includes all adjustments (consisting of normal recurring adjustments) that, in the opinion of management, are necessary for a fair presentation of the information presented. This information should be read in conjunction with the consolidated financial statements and related notes thereto included elsewhere in this prospectus.

	Fiscal Year 2019				Fiscal Year 2020			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(dollars in thousands)							
Net sales	$252,242	$257,394	$256,313	$271,035	$156,477	$249,226	$270,129	$297,682
Gross profit	102,518	102,509	98,107	92,941	40,942	79,981	95,528	113,848
Income from operations(1)	35,506	24,749	13,840	2,898	20,048	19,669	14,731	2,376
Net income (loss)	26,452	14,905	4,090	(3,578)	12,269	16,777	4,251	(8,760)
Other Operating Data:								
Adjusted EBITDA(3)	$ 41,797	$ 39,656	$ 32,511	$ 18,035	$ (8,198)	$ 34,245	$ 30,768	$ 43,987
Comparable sales(2)	8%	11%	16%	15%	(38%)	(2%)	4%	8%

(1) The results of operations were impacted by share-based compensation expense related to revaluing our liability-classified incentive units, as reflected in the table in footnote B immediately below.
(2) The computation of comparable sales includes results from stores that were temporarily closed due to COVID-19.
(3) The following table provides a reconciliation of net income (loss) to Adjusted EBITDA for the periods presented (dollars in thousands):

	Fiscal Year 2019				Fiscal Year 2020			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Net income (loss)	$ 26,452	$ 14,905	$ 4,090	$ (3,578)	$ 12,269	$ 16,777	$ 4,251	$ (8,760)
Interest expense	259	3,747	6,330	6,157	6,094	5,885	4,666	4,693
Interest income, net of other expense (income)	95	(154)	(84)	(59)	133	(50)	(12)	(113)
Provision for income taxes	8,700	6,251	3,504	378	1,552	(2,943)	5,826	6,556
Depreciation and amortization(A)	6,510	7,275	8,322	8,101	8,375	8,310	8,477	7,910
Share-based compensation(B)	(2,769)	2,630	7,082	5,050	(38,515)	5,810	7,124	33,372
Non-cash deductions and charges(C)	676	940	1,243	1,576	896	435	424	229
Other expenses (income)(D)	(56)	132	2,024	410	998	21	12	100
Ohio Distribution Center costs(E)	1,930	3,930	—	—	—	—	—	—
Adjusted EBITDA	$ 41,797	$ 39,656	$ 32,511	$ 18,035	$ (8,198)	$ 34,245	$ 30,768	$ 43,987

(A) Depreciation and amortization excludes amortization of debt issuance costs and original issue discount for all periods that are reflected in interest expense.
(B) Share-based compensation is determined based on the revaluation of our liability-classified incentive units.
(C) Non-cash deductions and charges includes losses on property and equipment disposals and the net impact of non-cash rent expense.
(D) Other expenses represent non-routine expenses, including IPO-related transaction fees and the reimbursement of certain management expenses, primarily for travel, incurred by Sycamore on our behalf, which are not considered to be part of our core business.
(E) Represents the duplicative and start-up costs associated with our West Jefferson, Ohio distribution center leased in 2018. This isolates the effect of incurring costs related to our West Jefferson, Ohio distribution center, which was not yet fully operational in 2019, while also incurring distribution and e-Commerce fulfillment costs charged to us by Hot Topic under the various service agreements.

Liquidity and Capital Resources

General

Our business relies on cash flows from operations as our primary source of liquidity. We do, however, have access to additional liquidity, if needed, through borrowings under our Amended ABL Facility. Our primary cash

needs are for merchandise inventories, payroll, rent for our stores, headquarters and distribution center, capital expenditures associated with opening new stores and updating existing stores, logistics and information technology. We also need cash to fund our interest and principal payments on the New Term Loan Credit Agreement and pay Hot Topic for certain services provided to us pursuant to the Amendment to Amended and Restated Services Agreement (as defined in "Note 11—Related Party Transactions" contained in the consolidated financial statements and notes, included elsewhere in this prospectus). In addition, we used a portion of the proceeds from the Original Term Loan Credit Agreement to purchase certain information technology assets from Hot Topic in August 2019. The remaining proceeds were primarily used to purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp., during the second quarter of 2019. Subsequently during the same fiscal quarter, our parent issued a related party promissory note receivable to us in exchange for the $213.2 million investment in HT Intermediate Holdings Corp. senior participating preferred stock, including $1.4 million of accrued interest. Additional future liquidity needs will include funding the costs of operating as a public company. The most significant components of our working capital are cash and cash equivalents, merchandise inventories, prepaid expenses and other current assets, accounts payable and accrued and other current liabilities. We believe that cash generated from operations and the availability of borrowings under our Amended ABL Facility or other financing arrangements will be sufficient to meet working capital requirements and anticipated capital expenditures for at least the next 12 months. There can be no assurance, however, that our business will generate sufficient cash flows from operations or that future borrowings will be available under our Amended ABL Facility or otherwise to enable us to service our indebtedness, or to make capital expenditures in the future. Our future operating performance and our ability to service or extend our indebtedness will be subject to future economic conditions and to financial, business and other factors, many of which are beyond our control.

Cash Flow Analysis

A summary of operating, investing and financing activities are shown in the following table (dollars in thousands):

	Year Ended			Three Months Ended	
	February 2, 2019	February 1, 2020	January 30, 2021	May 2, 2020	May 1, 2021
Net cash provided by operating activities	$ 115,092	$ 99,090	$ 151,821	$ 7,192	$73,834
Net cash used in investing activities	(40,507)	(56,120)	(11,570)	(6,076)	(2,786)
Net cash (used in) provided by financing activities	(72,841)	(23,335)	(45,925)	48,050	(3,250)

Net Cash Provided By Operating Activities

Operating activities consist primarily of net income adjusted for non-cash items, including depreciation and amortization and share-based compensation, the effect of working capital changes, taxes paid and lease incentives received from landlords.

Net cash provided by operating activities during the three months ended May 1, 2021 was $73.8 million compared to $7.2 million during the three months ended May 2, 2020. The increase in cash provided by operating activities during the three months ended May 1, 2021 was primarily as a result of an increase in net income, excluding the impact of share-based compensation expense, compared to the three months ended May 2, 2020. Due to an increase in Torrid Holding LLC's equity value in the three months ended May 1, 2021, share-based compensation expense was added back to net cash provided by operating activities as a non-cash adjustment, compared to the three months ended May 2, 2020 in which share-based compensation expense was deducted from net cash provided by operating activities. The increase in cash provided by operating activities was also as a result of an increase in accrued and other current liabilities primarily related to increases in accrued payroll and related expenses and accrued inventory in transit, and a decrease in inventory due to increased inventory sell-through during the three months ended May 1, 2021 as a result of an increase in net sales during

the three months ended May 1, 2021, as well as the disruption caused by the COVID-19 pandemic during the three months ended May 2, 2020. The increase in cash provided by operating activities was partially offset by decreases in accounts payable and operating lease liabilities.

Net cash provided by operating activities during 2020 was $151.8 million compared to $99.1 million during 2019. The increase in cash provided by operating activities was primarily as a result of increases in accounts payable and income taxes payable, a decrease in inventory purchases as a result of the decrease in net sales and a decrease in operating lease liabilities. The increase in cash provided by operating activities was partially offset by a decrease in net income and a lower increase in accrued and other current liabilities related to lower accrued payroll and related expenses and lower term loan interest payable.

Net cash provided by operating activities during 2019 was $99.1 million compared to $115.1 million during 2018. The decrease in cash provided by operating activities was primarily as a result of a decrease in net income, an increase in inventory due to increased inventory purchases to support net sales growth and decreases in operating lease liabilities and amounts due to related parties. The decrease in cash provided by operating activities was partially offset by an increase in share-based compensation due to an increase in the Torrid Holding LLC equity value, increases in operating right-of-use assets amortization, accrued and other current liabilities related to higher accrued payroll and related expenses and term loan interest payable.

Net Cash Used In Investing Activities

Typical investing activities consist primarily of capital expenditures for growth (new store openings, relocations and major remodels), store maintenance (minor store remodels and investments in store fixtures), and infrastructure to support the business related primarily to information technology, our headquarters facility and our West Jefferson, Ohio distribution center.

Net cash flows used in investing activities during the three months ended May 1, 2021 was $2.8 million compared to $6.1 million during the three months ended May 2, 2020. The decrease in cash used in investing activities was primarily as a result of a decrease in purchases of property and equipment due to a decrease in investments in our West Jefferson, Ohio distribution center.

Net cash flows used in investing activities were $11.6 million and $56.1 million in 2020 and 2019, respectively. The decrease in cash used in investing activities was primarily as a result of a decrease in purchases of property and equipment due to fewer new store openings in 2020, a decrease in investments in our West Jefferson, Ohio distribution center in 2020 and the absence of information technology asset purchases from Hot Topic in 2019.

Net cash flows used in investing activities were $56.1 million and $40.5 million in 2019 and 2018, respectively. The increase in cash used in investing activities was primarily as a result of the purchase of certain information technology assets from Hot Topic for $29.5 million and capital expenditures related to the opening of new stores and store relocations and investments in our West Jefferson, Ohio distribution center.

Net Cash Used In Financing Activities

Financing activities consist primarily of borrowings and repayments related to our Original ABL Facility, borrowings and repayments related to the Original Term Loan Credit Agreement and fees and expenses paid in connection with entry into our Original ABL Facility, and Original Term Loan Credit Agreement. In addition, financing activities consist of repayments related to our related party promissory note payable, payments related to our related party promissory notes receivable and capital distributions to our parent.

Net cash used in financing activities during the three months ended May 1, 2021 was $3.3 million compared to $48.1 million of net cash provided by financing activities for the three months ended May 2, 2020. The decrease in net cash provided by financing activities is primarily as a result of a decrease in proceeds from the revolving credit facility and an increase in term loan principal payments.

Net cash used in financing activities was $45.9 million for 2020 compared to $23.3 million for 2019. The increase in cash used in financing activities was primarily as a result of an increase in term loan principal payments.

Net cash used in financing activities was $23.3 million for 2019 compared to $72.8 million for 2018. The decrease in cash used in financing activities was primarily as a result of $248.6 million of proceeds related to the Original Term Loan Credit Agreement, net of original issue discount, deferred financing costs and principal payments, partially offset by an increase in distributions to our parent from $60.7 million in 2018 to $256.4 million in exchange for related party promissory notes receivable issued to us, including a $214.6 million promissory note receivable issued in exchange for our $213.2 million investment in HT Intermediate Holdings Corp. senior participating preferred stock and $1.4 million of accrued interest in 2019. The decrease in cash used in financing activities was also partially offset by an increase of $18.6 million of net short-term repayments of our Original ABL Facility, as amended.

Debt Financing Arrangements

For the stated periods, our debt financing arrangements consisted of the following (in thousands):

	February 1, 2020	January 30, 2021	May 1, 2021
Original ABL Facility(1)	$ —	$ —	$ —
Original Term Loan Credit Agreement(2)			
Original Term Loan Credit Agreement	256,100	210,700	207,450
Less: current portion of unamortized original issue discount and debt financing costs	(1,370)	(1,494)	(1,494)
Less: noncurrent portion of unamortized original issue discount and debt financing costs	(5,307)	(4,294)	(3,920)
Total Original Term Loan Credit Agreement outstanding, net of unamortized original issue discount and debt financing costs	249,423	204,912	202,036
Less: Current portion of Original Term Loan Credit Agreement, net of unamortized original issue discount and debt financing costs	(9,030)	(11,506)	(11,506)
Total Original Term Loan Credit Agreement, net of current portion and unamortized original issue discount and debt financing costs(3)	$ 240,393	$ 193,406	$ 190,530

(1) The Original ABL Facility was amended on June 14, 2021 to, among other others, effect an increase in aggregate commitments (subject to a borrowing base) from $70.0 million to $150.0 million. As of June 23, 2021, availability under the Amended ABL Facility was $145.1 million, which reflects no borrowings and $4.9 million of standby letters of credit issued and outstanding.

(2) On June 14, 2021, we repaid and terminated the Original Term Loan Credit Agreement with borrowings under the New Term Loan Credit Agreement.

(3) This table does not give effect to our New Term Loan Credit Agreement described above.

Original Term Loan Credit Agreement

On June 14, 2019, we entered into a term loan credit agreement ("Term Loan Credit Agreement") among Cortland Capital Market Services LLC, as agent, KKR Credit Advisors (US) LLC, as structuring advisor, and the lenders party thereto (the "Original Lenders"). On September 17, 2020, we entered into an amendment to the Term Loan Credit Agreement (as so amended, "Original Term Loan Credit Agreement") with the Lenders, pursuant to which the definition of total debt used in the calculation of Original Total Net Leverage Ratio (as defined below) was amended. All other material terms of the Term Loan Credit Agreement remained substantially the same. In September 2020, in conjunction with the Original Term Loan Credit Agreement, we prepaid $35.0 million of the outstanding Original Principal (as defined below), associated accrued interest of

$0.2 million and an amendment fee of $0.5 million. On June 14, 2021, we repaid and terminated the Original Term Loan Credit Agreement with borrowings under the New Term Loan Credit Agreement. For the description of the New Term Loan Credit Agreement see "Description of Certain Indebtedness—New Term Loan Credit Agreement."

The Term Loan Credit Agreement provided for term loans in an initial aggregate amount of $260.0 million ("Original Principal"), which was recorded net of an original issue discount ("OID") of $2.9 million and had a maturity date of December 14, 2024. In connection with the Term Loan Credit Agreement, we paid financing costs of approximately $4.6 million.

The $257.1 million proceeds of the Term Loan Credit Agreement, net of OID, were used to (i) purchase $213.2 million of senior participating preferred stock from Hot Topic's Parent, HT Intermediate Holdings Corp., for which we subsequently received a promissory note receivable in exchange from our parent; (ii) purchase certain information technology assets from Hot Topic for $29.5 million; (iii) fund a $10.0 million promissory note receivable from our parent; and (iv) pay for financing costs associated with the Term Loan Credit Agreement.

Loans made pursuant to the Original Term Loan Credit Agreement bore interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate quoted by The Wall Street Journal, (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month, plus 1.00%; or (b) at a LIBOR rate for the interest period relevant to such borrowing, in each case plus an applicable margin of either 6.75% or 7.00% for LIBOR borrowings and either 5.75% or 6.00% for base rate borrowings, in each case, based upon our total net leverage ratio as of the relevant testing date.

If we elected the LIBOR rate, interest was due and payable on the last day of each interest period, unless an interest period exceeded three months, then the respective dates that fall every three months after the beginning of the interest period would also be interest payment dates. If we elected the Base rate loan, interest was due and payable the last day of each fiscal quarter. The elected interest rate on May 1, 2021 was approximately 8%.

In addition to paying interest on the outstanding Original Principal under the Original Term Loan Credit Agreement, we were required to make fixed mandatory repayments of the Original Principal on the last business day of each fiscal quarter until maturity ("Original Repayment"). Original Repayments for the first four fiscal quarters, starting in the third quarter of 2019, represented 0.75% of the Original Principal, reduced as a result of the application of prior Prepayments, as defined below. For each of the eight fiscal quarters thereafter, Original Repayments represent 1.25% of the Original Principal, reduced as a result of the application of prior Original Prepayments, as defined below. For each of the fiscal quarters thereafter until the maturity date, Original Repayments represented 1.875% of the Original Principal, reduced as a result of the application of prior Original Prepayments, as defined below.

Under the Original Term Loan Credit Agreement, we were also required to make variable mandatory prepayments of the Original Principal, under certain conditions as described below, approximately 102 days after the end of each fiscal year (each, an "Original Prepayment"). Original Prepayments, if applicable, commenced at the end of 2019 and represented between 25% and 75% (depending on our first lien net leverage ratio) of Excess Cash Flow (as defined in the Original Term Loan Credit Agreement) in excess of $2.0 million, minus prepayments of Original Principal, the Original ABL Facility (to the extent accompanied by a permanent reduction in the commitments thereunder) and certain other specified indebtedness and amounts in connection with certain other enumerated items. As of January 30, 2021, our Excess Cash Flow amount was $2.0 million which did not meet the Excess Cash Flow threshold to require an Original Prepayment.

In addition to mandatory Original Repayment and Original Prepayment obligations, we had the option to prepay a portion of the outstanding Original Principal ("Original Optional Prepayment"). If we made Original Optional Prepayments before June 14, 2022, we would be subject to penalties ranging from 1.00% to 3.00% of

the aggregate principal amount, with the exception of up to $50.0 million that could be repaid with the proceeds of a qualifying IPO without penalty.

All of Torrid LLC's existing domestic subsidiaries and Torrid Intermediate LLC unconditionally guaranteed all obligations under the Original Term Loan Credit Agreement. Substantially all of the assets of Torrid LLC, Torrid LLC's existing subsidiaries and Torrid Intermediate LLC secured all such obligations and the guarantees of those obligations, subject to certain exceptions.

Our borrowings under the Original Term Loan Credit Agreement were subject to a financial covenant that required us to maintain a maximum ratio of our total debt to EBITDA, (as defined in the Original Term Loan Credit Agreement) ("Original Total Net Leverage Ratio"). The maximum ratio was 3.60 for the quarter ended November 2, 2019, 3.35 for the quarters ended February 1, 2020, May 2, 2020, and August 1, 2020, 3.10 for the quarter ended October 31, 2020, 2.50 for the quarter ended January 30, 2021, 2.35 for the quarter ended May 1, 2021, 2.10 for the quarters ending July 31, 2021 and October 30, 2021, and 1.85 for all quarters thereafter. The Original Term Loan Credit Agreement amended the definition of total debt used in the Original Total Net Leverage Ratio calculation for the quarters ended October 31, 2020, January 30, 2021, and May 1, 2021 and the quarter ending July 31, 2021. The amended definition of total debt permitted us to exclude indebtedness associated with our Original ABL Facility through the quarter ended October 31, 2020, removed the $20.0 million cap from the amount of cash and cash equivalents on-hand that we were permitted to net against our total debt for purposes of the ratio calculation through the quarter ended January 30, 2021, and raised the $20.0 million cap to $40.0 million and $30.0 million for the quarters ended May 1, 2021 and ending July 31, 2021, respectively, before reverting to $20.0 million for all quarters thereafter. As of May 1, 2021, our Original Total Net Leverage Ratio was 0.91.

The Original Term Loan Credit Agreement contained a limitation on our capital expenditures paid in cash in any year and such expenditures could not exceed 37.5% of prior year Adjusted EBITDA (as defined by the Original Term Loan Credit Agreement). If the amount of our capital expenditures paid in cash in any year was less than the 37.5% threshold, 50% of the difference was to be automatically applied to increase the maximum threshold in the next year. The Original Term Loan Credit Agreement also contained a number of covenants that, among other things and subject to certain exceptions, would restrict our ability and the ability of our subsidiaries to: create, incur or assume liens on our assets or property; incur additional indebtedness; make capital expenditures; issue preferred or disqualified stock; incur hedging obligations; consolidate or merge; sell assets; pay dividends or make distributions, make investments, or engage in transactions with our affiliates. As of May 1, 2021, we were compliant with our debt covenants under the Original Term Loan Credit Agreement.

As of May 1, 2021, total borrowings, net of OID and financing costs, of $202.0 million remained outstanding under the Original Term Loan Credit Agreement. During 2019, we recognized $14.9 million of interest expense and recognized $0.9 million of non-cash interest expense related to OID and financing costs related to the Term Loan Credit Agreement. During 2020, we recognized $19.2 million of interest expense and recognized $1.4 million of OID and financing costs related to the Original Term Loan Credit Agreement. The OID and financing costs were amortized over the Original Term Loan Credit Agreement's five and a half-year term and were reflected as a direct deduction of the face amount of the term loan in our consolidated balance sheets. We recognize interest payments, together with amortization of the OID and financing costs, in interest expense in our consolidated statements of operations and comprehensive income.

Senior Secured Asset-Based Revolving Credit Facility

In May 2015, we entered into a credit agreement for a senior secured asset-based revolving credit facility ("ABL Facility") of $50.0 million (subject to a borrowing base), with Bank of America, N.A. On October 23, 2017, we entered into an amended and restated credit agreement which amended the ABL Facility and this agreement was subsequently amended on June 14, 2019, September 4, 2019 (the ABL Facility as so amended, the "Original ABL Facility") and on June 14, 2021 (the Original ABL Facility as so amended, the "Amended

ABL Facility"). Under the Original ABL Facility, (i) $70.0 million in aggregate commitments (subject to a borrowing base) were available to us and (ii) we had a right to request additional commitments of up to $30.0 million plus the aggregate principal amount of any permanent principal reductions we could take (subject to customary conditions precedent). The principal amount outstanding of the loans under the Original ABL Facility were due and payable in full on October 23, 2022. Under the Amended ABL Facility, (i) $150.0 million in aggregate commitments (subject to a borrowing base) are available to us and (ii) we have a right to request additional commitments of up to (a) $50.0 million plus (b) the aggregate principal amount of any permanent principal reductions we may take plus (c) the amount by which the borrowing base exceeds the aggregate commitments (subject to customary conditions precedent). The principal amount outstanding of the loans under the Amended ABL Facility is due and payable in full on June 14, 2026.

The borrowing base for the Original ABL Facility at any time equaled the sum of 90% of eligible credit card receivables, plus 90% of the appraised net orderly liquidation value of eligible inventory and eligible in-transit inventory multiplied by the cost of such eligible inventory and eligible in-transit inventory (to be increased to 92.5% during the period beginning on September 1 of each year and ending on December 31 of each year). The Original ABL Facility included borrowing capacity for letters of credit and for borrowings on same-day notice, referred to as Swing Line Loans, and is available in U.S. dollars.

Under the Original ABL Facility, we had the right to request up to $30.0 million of additional commitments plus the aggregate principal amount of any permanent principal reductions we may take (as compared to (a) $50.0 million of additional commitments plus (b) the aggregate principal amount of any permanent principal reductions we may take plus (c) the amount by which the borrowing base exceeds the aggregate commitments, under the Amended ABL Facility). The lenders under this facility are not under any obligation to provide any such additional commitments, and any increase in commitments is subject to customary conditions precedent. If we were to request any such additional commitments and the existing lenders or new lenders were to agree to provide such commitments, the size of the Original ABL Facility could increase to up to $100.0 million (as compared to at least $200.0 million under the Amended ABL Facility), but our ability to borrow under this facility would still be limited by the amount of the borrowing base.

Borrowings under the Original ABL Facility bore bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate of Bank of America, N.A., (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate plus 1.00%; or (b) at a LIBOR rate for the interest period relevant to such borrowing adjusted for certain costs, in each case plus an applicable margin that ranges from 1.25% to 1.75% for LIBOR borrowings and 0.25% to 0.75% for base rate borrowings, in each case, based on average daily availability. As of May 1, 2021, the applicable interest rate for borrowings under the Original ABL Facility was approximately 4% per annum.

If we elected the LIBOR rate, interest was due and payable on the last day of each interest period, unless an interest period exceeded three months, then the respective dates that fell every three months after the beginning of the interest period would also be interest payment dates. If we opted for the base rate (including a Swing Line Loan), interest was due and payable on the first business day of each month and on the maturity date.

In addition to paying interest on outstanding principal under the Original ABL Facility, we were required to pay a commitment fee in respect of unutilized commitments. The commitment fee ranged between 0.25% and 0.375% per annum of unutilized commitments and were subject to adjustment each fiscal quarter based on the amount of unutilized commitments during the immediately preceding fiscal quarter. We were also required to pay customary letter of credit fees and agent fees.

If at any time the aggregate amount of outstanding loans, unreimbursed letter of credit drawings and undrawn letters of credit under the Original ABL Facility, exceeded the lesser of (a) the commitment amount and (b) the borrowing base, we were required to repay outstanding loans and/or cash collateralize letters of credit in an aggregate amount equal to such excess, with no reduction of the commitment amount.

We could voluntarily reduce the unused portion of the commitment amount and repay outstanding loans at any time under the Original ABL Facility. Prepayment of the loans could be made without premium or penalty other than customary "breakage" costs with respect to LIBOR loans.

All obligations under the Original ABL Facility, were unconditionally guaranteed by substantially all of Torrid Intermediate LLC's existing majority-owned domestic subsidiaries and were required to be guaranteed by certain of Torrid Intermediate LLC's future domestic majority-owned subsidiaries. All obligations under the Original ABL Facility and the guarantees of those obligations, were secured, subject to certain exceptions, by substantially all of Torrid Intermediate LLC's assets.

The Original ABL Facility, required us to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 if we failed to maintain Specified Availability (as defined by the Original ABL Facility), of at least the greater of 10% of the Loan Cap (as defined by the Original ABL Facility) and $5.0 million (as compared to $7.0 million under the Amended ABL Facility). The Original ABL Facility contained a number of other covenants that, among other things and subject to certain exceptions, restricted our ability and the ability of our subsidiaries to: incur additional indebtedness; pay dividends on our capital stock or redeem, repurchase or retire our capital stock or our other indebtedness; make investments, loans and acquisitions; engage in transactions with our affiliates; sell assets, including capital stock of our subsidiaries; alter the business we conduct; consolidate or merge; and incur liens. As of May 1, 2021, we were compliant with our covenants under the Original ABL Facility.

The Original ABL Facility, specifically restricted dividends and distributions, aside from amounts to cover ordinary operating expenses and taxes, between our subsidiaries and to us. However, dividends and distributions were permitted at any time that either (1) availability under the Original ABL Facility, was equal to or greater than 15% of the maximum borrowing amount on a pro forma basis and we were pro forma compliant with a 1.00 to 1.00 fixed charge coverage ratio or (2) availability under the Original ABL Facility, was equal to or greater than 20% of the maximum borrowing amount on a pro forma basis. As of May 1, 2021, the maximum restricted payments utilizing the Original ABL Facility that our subsidiaries could make from its net assets was $55.0 million.

Availability under the Original ABL Facility at the end of 2019 was $68.0 million, which reflects no borrowings and $2.0 million of standby letters of credit issued and outstanding. Availability under the Original ABL Facility at the end of 2020 and as of May 1, 2021 was $65.5 million, which reflects no borrowings and $4.5 million of standby letters of credit issued and outstanding.

Except as noted above, the terms of our Amended ABL Facility are consistent with terms of our Original ABL Facility. For a description of our Amended ABL Facility. See "Description of Certain Indebtedness—Amended ABL Facility."

Contractual Obligations

We enter into long term contractual obligations and commitments in the normal course of business, primarily debt obligations, purchase obligations and non-cancelable operating leases. As of January 30, 2021, our contractual cash obligations over the next several periods are set forth below (dollars in thousands).

	Payments Due by Period				
	Total	<1 Year	1-3 Years	3-5 Years	Thereafter
Contractual Obligations:					
Original Term Loan Credit Agreement Obligations(1)	$ 210,700	$ 13,000	$ 35,750	$ 161,950	$ —
Interest Expense on Original Term Loan Credit Agreement Obligations(1)(2)	55,416	16,129	28,724	10,563	—
Purchase Obligations	232,922	232,922	—	—	—
Letters of Credit and Other Obligations(3)	38,897	24,098	12,192	2,607	—
Operating Lease Obligations(4)	355,986	65,746	119,530	93,536	77,174
Total(5)	$ 893,921	$ 351,895	$ 196,196	$ 268,656	$ 77,174

(1) Amounts assume that the Original Term Loan Credit Agreement was paid upon maturity and do not consider any variable mandatory principal prepayments or optional principal prepayments which we may make in the future. On June 14, 2021, we repaid and terminated the Original Term Loan Credit Agreement with borrowings under the New Term Loan Credit Agreement.

(2) Assumes an interest rate of approximately 8% per annum, consistent with the interest rate at January 30, 2021.

(3) Amounts listed above do not include cash obligations related to relocation expenses in connection with the involuntary separation of certain employees due to the uncertainty regarding the amount of such expenses.

(4) Includes estimated annual future minimum occupancy payments under operating leases including minimum base rents, common area maintenance charges and heating, ventilation and cooling charges, for lease terms that include periods covered by options to extend some of our leases, as we are reasonably certain to exercise those options. Options to terminate our leases have not been included in any lease terms as we are not reasonably certain to exercise those options. See "Note 9—Leases" contained in the consolidated financial statements and notes, included elsewhere in this prospectus for additional disclosure related to operating lease obligations.

(5) This table does not give effect to the New Term Loan Credit Agreement described above. Our anticipated contractual cash obligations under the New Term Loan Credit Agreement amount to (A) principal payments of (i) $8,750,000 for the next 1 year after the completion of this offering, (ii) $35,000,000 between 1-3 years after the completion of this offering, (iii) $35,000,000 between 3-5 years after the completion of this offering and (iv) $271,250,000 thereafter; and (B) assuming an interest rate of approximately 6.25% per annum, consistent with our interest rate on June 23, 2021, interest expense of (i) $21,034,180 for the next 1 year after the completion of this offering, (ii) $41,024,740 between 1-3 years after the completion of this offering, (iii) $36,601,128 between 3-5 years after the completion of this offering and (iv) $32,833,767 thereafter.

We have not included any income tax audit settlement payments due in less than one year in the contractual obligations table above as we do not expect any income tax audit settlements related to open audits to be fully settled in 2021 or any material gross unrecognized tax benefits for which the statutes of limitations are expected to expire in 2021. In addition, due to the uncertainty regarding the timing of future cash outflows associated with noncurrent unrecognized tax benefits of $2.0 million, we are unable to make a reliable estimate of the periods of cash settlement with the respective tax authorities and have not included such amounts in the contractual obligations table above.

Off-Balance Sheet Arrangements

We currently do not have any off-balance sheet arrangements or financing activities with special-purpose entities.

Critical Accounting Policies and Significant Estimates

Our discussion of results of operations and financial condition is based upon the consolidated financial statements included elsewhere in this prospectus, which have been prepared in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and certain assumptions about future events that affect the classification and amounts reported in our consolidated financial statements and accompanying notes, including revenue and expenses, assets and liabilities, and the disclosure of contingent assets and liabilities. These estimates and assumptions are based on our historical results as well as management's judgment. Although management believes the judgment applied in preparing estimates is reasonable based on circumstances and information known at the time, actual results could vary materially from estimates based on assumptions used in the preparation of our consolidated financial statements.

The most significant accounting estimates involve a high degree of judgment or complexity. Management believes the estimates and judgments most critical to the preparation of our consolidated financial statements and

to the understanding of our reported financial results include those made in connection with revenue recognition, including accounting for gift card breakage, estimated merchandise returns and loyalty program expenses; estimating the value of inventory; determining operating lease liabilities; and estimating share-based compensation expense. Management evaluates its policies and assumptions on an ongoing basis. Our significant accounting policies related to these accounts in the preparation of our consolidated financial statements are described below (see Note 2 to our audited consolidated financial statements included elsewhere in this prospectus for additional information regarding our critical accounting policies).

Revenue Recognition

In the first quarter of 2018, we adopted ASC 606 using the modified retrospective adoption method. Under the modified retrospective adoption method, our consolidated financial statements as of and for the year ended February 2, 2019 and thereafter, reflect the provisions of ASC 606. The adoption of ASC 606 did not have a material impact on our consolidated financial position, results of operations or cash flows. Under ASC 606, we recognize revenue when our performance obligations under the terms of a contract or an implied arrangement with a customer are satisfied, which is when the merchandise is transferred to the customer and the customer obtains control of it. The amount of revenue we recognize reflects the total consideration we expect to receive for the merchandise, which is the transaction price. For arrangements that contain multiple performance obligations, we allocate the transaction price to each performance obligation on a relative stand-alone selling price basis.

At our retail store locations, we satisfy our performance obligation and recognize revenue at the point in time when a customer takes possession of the merchandise and tenders payment at the point-of-sale register. For e-Commerce sales shipped to a customer from our distribution center, or from a retail store location (ship from store), we satisfy our performance obligation and recognize revenue upon shipment, which is the point in time we believe the customer obtains control of the merchandise after payment has been tendered. Income we receive from customers for shipping and handling is recognized as a component of revenue upon shipment of merchandise to the customer. We satisfy our performance obligation and recognize revenue from e-Commerce sales shipped to a retail store location from our distribution center, or fulfilled from merchandise already located at a retail store location (buy-online-pickup-in-store), at the point in time when the customer retrieves the merchandise from within the retail store location or at a retail store curbside.

We are required to estimate certain amounts included in a contract or an implied arrangement with a customer which add variability to the transaction price. Under certain conditions, we are obligated to accept customer returns for most of our merchandise. Sales returns reduce the revenue we expect to receive for merchandise and therefore add variability to the transaction price. Based on historical return pattern experience, we reasonably estimate the amount of merchandise expected to be returned and exclude it from revenue. We record a reserve for merchandise returns at the time revenue is recognized based on prior returns experience and expected future returns in accordance with our return policy and discretionary returns practices. We monitor our returns experience and resulting reserves on an ongoing basis and we believe our estimates are reasonable. We do not believe there is a reasonable likelihood that there will be a material change in the assumptions used to calculate the allowance for sales returns. However, if actual sales returns are significantly different than the estimated allowance, our results of operations could be materially affected.

We satisfy our performance obligation and recognize revenue from gift cards and store merchandise credits at the point in time when the customer presents the gift cards and store merchandise credits for redemption. Gift card breakage is income recognized due to the non-redemption of a portion of gift cards sold by us for which a liability was recorded in prior periods. We recognize estimated gift card breakage over time as a component of net sales in proportion to the pattern of rights exercised by the customer as reflected in actual gift card redemption patterns over the period. Based upon historical experience, we estimate the value of outstanding gift cards that will ultimately not be redeemed (breakage) nor escheated under statutory unclaimed property laws. This amount is recognized as revenue over the time pattern established by our historical gift card redemption experience. We monitor our gift card redemption experience and associated accounting on an ongoing basis. Our historical experience has not varied significantly from amounts historically recorded and we believe our

assumptions are reasonable. While customer redemption patterns result in estimated gift card breakage, changes in our customers' behavior could impact the amount that ultimately is unused and could affect the amount recognized as a component of net sales.

If a customer earns loyalty program points in connection with the sales transactions described above, then we have a remaining performance obligation and cannot recognize all the revenue. A portion of the revenue is allocated to the loyalty program points earned during the transaction. We satisfy our performance obligation and recognize revenue allocated to these loyalty program points and the resulting awards at the point in time when the awards are redeemed for merchandise, when we determine that they will not be redeemed, or when the awards and points expire. Under our loyalty program, customers accumulate points based on purchase activity and effective the second quarter of 2019, qualifying non-purchase activity. Upon reaching a certain point level, customers can earn awards that may only be redeemed for merchandise. Unredeemed points typically expire after 13 months without additional purchase activity and effective the second quarter of 2019, qualifying non-purchase activity. Unredeemed awards typically expire 45 days after issuance. We use historical redemption rates to estimate the value of future award redemptions and we recognize the estimated value of these future awards as a reduction of revenue in the consolidated statements of operations and comprehensive income in the period the points are earned by the customer.

Inventory

Inventory consists of finished goods merchandise held for sale to our customers. Inventory is valued at the lower of moving average cost or net realizable value.

In the normal course of business, we record inventory reserves based on past and projected sales performance, as well as the inventory on hand. We make certain assumptions regarding net realizable value in order to assess whether our inventory is recorded properly at the lower of cost or net realizable value. These assumptions are based on both historical average selling price experience, current selling price information and estimated future selling price information. The carrying value of inventory is reduced to estimated net realizable value when factors indicate that merchandise will not be sold on terms sufficient to recover its cost.

We monitor inventory levels, sales trends and sales forecasts to estimate and record reserves for excess, slow-moving and obsolete inventory. Accordingly, estimates of future sales prices requires management judgment based on historical experience, assessment of current conditions and assumptions about future transactions. In addition, we conduct physical inventory counts to determine and record actual shrinkage. Estimates for shrinkage are recorded between physical counts, based on actual shrinkage experience. Actual shrinkage can vary from these estimates. We believe our assumptions are reasonable, and we monitor actual results to adjust estimates and inventory balances on an ongoing basis.

Leases

On February 3, 2019, we adopted ASU 2016-02, *Leases*, and all related guidance ("ASC 842") and recorded a $317.7 million right-of-use ("ROU") asset and a corresponding $366.7 million lease liability in our consolidated balance sheet for all eligible leases with terms longer than 12 months. Our consolidated financial statements for 2019 reflect the provisions of ASC 842, while prior periods do not. The initial ROU assets recognized upon adoption are equal to the initial operating lease liabilities, adjusted for the balances of leasehold interests, deferred rent and lease incentives on the adoption date.

Upon our adoption of ASC 842, we elected not to reassess whether any expired or existing contracts are or contain leases and not to reassess the lease classification for any expired or existing leases. We consider an agreement to be or contain a lease if it conveys us with the right to control the use of an identified asset for a period of time in exchange for consideration. Based on these criteria, we have operating lease agreements for our retail stores, distribution center and headquarter office space; and vehicles and equipment; under primarily non-cancelable leases with terms ranging from approximately two to seventeen years.

Certain of our operating lease agreements contain one or more options to extend the leases at our sole discretion. However, the periods covered by the options to extend the leases of our retail stores, vehicles and

equipment are not recognized as part of the associated ROU assets and lease liabilities, as we are not reasonably certain to exercise the options. The periods covered by the options to extend the leases of our distribution center and headquarter office space are recognized as part of the associated ROU assets and lease liabilities, as we are reasonably certain to exercise the options. Some of our operating lease agreements contain options to terminate the lease under certain conditions.

The retail space leases provide for rents based upon the greater of the minimum annual rental amounts or a percentage of annual store net sales volume. Certain leases provide for increasing minimum annual rental amounts. We consider rents based upon a percentage of annual store net sales volume, and other rent-related payments that generally vary because of changes in facts and circumstances (other than due to the passage of time), to be variable lease payments. Variable lease payments associated with retail space leases are recognized as occupancy costs within cost of goods sold in the condensed consolidated statements of operations and comprehensive income in the period in which the obligation for those payments is incurred. We generally consider all other lease payments to be fixed in nature and the sum of all the discounted remaining fixed payments in the lease terms make up the lease liabilities in our condensed consolidated balance sheet (if the lease terms are longer than 12 months).

We discount the fixed lease payments that make up the lease liabilities using an incremental borrowing rate ("IBR"), as the rates implicit in our leases are not readily determinable. The IBR is the rate of interest that we would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. The determination of the incremental borrowing rate incorporates various assumptions including the financial scale, leverage and coverage measures that indicate our financial flexibility and long-term viability. These measures utilize credit ratings that are assigned scores which, when weighted based on certain quantitative factors, indicate overall credit score. An IBR for each lease term is determined based on the credit score. All scores, credit ratings and corresponding IBRs are highly subjective.

We choose not to separate nonlease components (such as common area maintenance charges and heating, ventilation and air conditioning charges), from lease components (such as fixed minimum rent payments), and instead account for each separate lease component and the nonlease components associated with that lease component as a single lease component. We do not apply ASC 842 requirements to leases that have lease terms of 12 months or less upon commencement, and instead recognize short-term lease payments, if applicable, in the condensed consolidated statements of operations and comprehensive income on a straight-line basis over the lease term.

In response to the COVID-19 pandemic, the Financial Accounting Standards Board issued interpretive guidance in April 2020, which provides entities the option to elect to account for lease concessions as though the enforceable rights and obligations existed in the original lease terms. We elected this option; accordingly, we do not remeasure the lease liabilities or record a change to the ROU assets for any concessions we receive for our retail store leases. Rather, deferred lease payments are recorded to operating lease liabilities until paid and lease concessions are recorded in the period they are negotiated or when the lower lease expense is paid.

Share-Based Compensation

Beginning in 2015 and through May 1, 2021, our parent, Torrid Holding LLC, issued 13.7 million incentive units in the aggregate, net of forfeitures, to certain members of management. These incentive units are intended to constitute profits interests.

We recognize share-based compensation expense associated with incentive units issued by our parent in selling, general and administrative expenses in our consolidated statements of operations and comprehensive income. The share-based compensation expense and related capital contribution are reflected in our consolidated financial statements as these awards are deemed to be for our benefit. The intent of the awards is to provide profit-sharing opportunities to management rather than equity ownership in our parent. In addition, the incentive

units do not have any voting or distribution rights and contain a repurchase feature, whereby upon termination, our parent has the right to purchase from former employees any or all of the vested incentive units at fair value. Based on these aforementioned features and characteristics, we determined that the incentive units were in-substance liabilities. The incentive units are remeasured based on the fair value of the awards at the end of each reporting period as the incentive units are accounted for as liability instruments in accordance with ASC 710, *Compensation-General*. We record the fair value of these awards as a capital contribution from our parent as our parent is the legal obligor for the incentive units.

The incentive units were valued utilizing a contingent claims analysis ("CCA") methodology based on a Black-Scholes option pricing model ("OPM"). Under the OPM, each class of incentive units is modeled as a call option with a unique claim on the assets of our parent. The characteristics of each class of incentive units determine the uniqueness of the claim on the assets of our parent. The OPM used to value the incentive units incorporates various assumptions, including the time to liquidity event, equity volatility and risk-free interest rate of return. Equity volatility is based on the historical volatilities of comparable publicly traded companies for the time horizon equal to the time to the anticipated liquidity event; and the risk-free interest rate is for a term corresponding to the time to liquidity event. The assumptions underlying the valuation of the incentive units represent our best estimates, which involve inherent uncertainties and the application of our judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our non-cash share-based compensation expense could be materially different. Our non-cash share-based compensation expense could also be materially different if there are significant fluctuations in the Torrid Holding LLC equity value.

Jumpstart Our Business Startups Act of 2012 ("JOBS Act")

In April 2012, the JOBS Act was signed into law. The JOBS Act contains provisions that, among other things, reduce certain reporting requirements for an "emerging growth company." As an "emerging growth company," we are electing not to take advantage of the extended transition period afforded by the JOBS Act for the implementation of new or revised accounting standards, and, as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth public companies. Section 107 of the JOBS Act provides that our decision not to take advantage of the extended transition period is irrevocable.

We have chosen to rely on the other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, as an "emerging growth company" we are not required to, among other things, (i) provide an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404 of Sarbanes-Oxley, (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, (iii) comply with any requirement that may be adopted by the Public Company Accounting Oversight Board (United States) regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the consolidated financial statements (auditor discussion and analysis) and (iv) disclose certain executive compensation-related items, such as the correlation between executive compensation and performance and comparisons of the chief executive officer's compensation to median employee compensation. We may remain an "emerging growth company" until the last day following the fifth anniversary of the completion of this offering. However, if certain events occur prior to the end of such five-year period, including if we become a "large accelerated filer," our total annual gross revenue equals or exceeds $1.07 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an "emerging growth company" prior to the end of such five-year period.

Recently Issued Accounting Pronouncements

See Note 3 to our audited consolidated financial statements included elsewhere in this prospectus for information regarding recently issued accounting pronouncements.

Quantitative and Qualitative Disclosure of Market Risks

Interest Rate Risk

We are subject to interest rate risk in connection with borrowings under our Amended ABL Facility and New Term Loan Credit Agreement, which bear interest at a variable rate equal to LIBOR plus an applicable margin. As of January 30, 2021, we had $204.9 million of outstanding variable rate loans under the Original Term Loan Credit Agreement and no outstanding variable rate borrowings under the Original ABL Facility. An increase or decrease of 1% in the variable rates on the amount outstanding under the Original Term Loan Credit Agreement would have increased or decreased our annual interest expense by approximately $2.4 million. See "—Original Term Loan Credit Agreement" and "—Senior Secured Asset-Based Revolving Credit Facility."

Foreign Exchange Risk

The reporting currency for our consolidated financial statements is U.S. dollars. To date, net sales generated outside of the United States have not been significant. As a result, we have not been impacted materially by changes in exchange rates and do not expect to be impacted materially for the foreseeable future. However, as our net sales generated outside of the United States increase, our results of operations could be adversely impacted by changes in exchange rates. For example, if we recognize international sales in local foreign currencies (as we currently do in Canada), as the U.S. dollar strengthens it would have a negative impact on our international results upon translation of those results into U.S. dollars during consolidation. We also purchase a significant quantity of merchandise from foreign countries. However, these purchases are made in U.S. dollar-denominated purchase contracts. We do not currently hedge foreign currency fluctuations and do not intend to do so for the foreseeable future.

Impact of Inflation

Our results of operations and financial condition are presented based on historical cost. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our results of operations and financial condition have been immaterial. We cannot assure you our business will not be affected in the future by inflation.

Internal Control Over Financial Reporting

In connection with the audits of our consolidated financial statements as of and for the years ended January 30, 2016, January 28, 2017 and February 3, 2018, we identified material weaknesses in our internal control over financial reporting. See the section titled "Risk Factors—Risks Related to this Offering and Ownership of Our Common Stock—If we are unable to design, implement and maintain effective internal controls in accordance with Section 404 of Sarbanes-Oxley, we may not be able to report our financial results in a timely and reliable manner, which could have a material adverse effect on our business and stock price. We have identified material weaknesses in our internal control over financial reporting."

BUSINESS

Our Mission

Torrid is on a mission to be the best direct-to-consumer apparel and intimates brand in North America by providing an unparalleled fit and experience that empowers curvy women to love the way they look and feel.

Who We Are

Torrid is the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America by net sales. We grew our net sales by 8% CAGR between 2017 and 2020, making us among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market. We served 3.2 million active customers and generated net sales of $974 million in 2020. Our proprietary product offering delivers a superior fit for the curvy woman that makes her love the way she looks and feels. We offer our customer high quality products across a broad assortment that includes tops, denim, dresses, intimates, activewear, footwear and accessories. Our style is unapologetically youthful and sexy. We believe our customer values the appeal and versatility of our curated product assortment that helps her look good for any occasion, including weekend, casual, work and dressy, all at accessible price points. We specifically design for stylish plus-size women and are maniacally focused on fit because fit is the highest priority for them, according to a consumer study we commissioned. Based on the same study, plus-size consumers consistently rank our fit as #1 among our peers, which contributes to our leading NPS of 55, nearly two times the peer average score of 30. Our consistent fit contributed to a return rate of only 9% for e-Commerce purchases in 2020, whereas return rates for e-Commerce purchases generally can be as high as 30%, according to Optoro's research. Through our product and brand experience, we connect with customers in a way that other brands, many of which treat plus-size customers as an afterthought, have not.

We are the category-leading brand, by net sales, in the $85 billion U.S. women's plus-size apparel and intimates market, which serves 90 million plus-size women, defined as wearing sizes 10 and up. We design for a 25 to 40 year old curvy woman, who leads a social and active lifestyle and wants to wear clothes that make her look and feel good. While 58% of our 2020 customers are under 40 years old and our average customer is a size 18, our products and style appeal to women of all ages and across the range of plus-sizes. Our target market is large, growing and underserved across both online and in-store channels. The average plus-size woman has historically struggled to find stylish products that fit well and 78% of plus-size women reported that they would spend more on clothing if they had more options available in their size. Through our differentiated product, unified go-to-market strategy, strong connection with our customer and data-driven merchandising approach, we believe we are uniquely positioned to unlock this untapped spend potential by providing her an experience that has not previously been available to her.

We execute a customer-first unified commerce strategy that is channel-agnostic, allowing our customer to experience our brand and unparalleled proprietary fit wherever and whenever she wants. We market directly to consumers via our e-Commerce platform and our physical footprint of 608 stores as of May 1, 2021. E-Commerce sales represented 42% and 48% of net sales in 2018 and 2019, respectively, having grown by 28% in 2018 and 28% in 2019. In 2020, e-Commerce sales represented 70% of net sales as e-Commerce sales grew by 38% and store sales declined as a result of temporary store closures and a slowdown in store traffic associated with the global COVID-19 pandemic. For the twelve months ended May 1, 2021, e-Commerce sales represented 69% of net sales. Our broad digital ecosystem—from our engaging e-Commerce website and mobile app to social media channels and our *Torrid Rewards* loyalty program—allows us to better connect, engage, track and service customers. This ecosystem also provides robust quantitative and qualitative customer data that we use to inform all aspects of our operations, from product development, to merchandising and marketing. Our stores are designed to create an inclusive and welcoming environment where our customers can discover and engage with our brand, experience our fit and connect with a community of like-minded women. Our stores also serve as an effective and profitable source of new customer acquisition with a

payback period of less than two years. The integration of e-Commerce and stores is fundamental to our customer-centric strategy as those two channels complement and drive traffic to one another. We have a history of converting single-channel customers into highly valuable omni-channel customers. In 2020, on average, omni-channel customers made 7.8 purchases and spent approximately 3.2 times more than single-channel customers. Our consistent product fit and the unified experience between our stores and e-Commerce platform creates a powerful flywheel effect that results in low customer acquisition cost, high repeat purchasing behavior and high customer lifetime value.

We form long-standing relationships with our customers, who are empowered by their Torrid experience and develop what we believe to be a deep, emotional connection with our brand. We were able to attribute approximately 98% of our net sales in 2020 to individual customers through our extensive customer and sales data resulting from our loyalty program and highly engaged customer base. Our customers' repeat purchasing behavior is evidenced by our strong net sales retention. In 2020, we retained 82% of net sales from the prior year's identifiable customers. While the net sales retention was down from 96% in 2019 due to temporary store closures resulting from the COVID-19 pandemic, we expect net sales retention to recover in future periods. The rich database of information provided by our loyalty program gives us deep insight into the plus-size consumer's purchasing behavior and allows us to market to our customers more effectively. Our stores and efficient marketing spend enable low CAC that, combined with our high repeat purchase behavior, generates an attractive ratio of customer LTV to CAC. For example, the 5-year LTV of our 2015 customer cohort was approximately 7.4 times the cost of acquiring those customers, which is a testament to our ability to efficiently acquire new customers.

We employ a data-driven approach to design, merchandising and inventory planning and allocation to deliver high quality products that combine the fit, style and attitude that our customer wants. As a fit-first company, we do not rely on being fashion leaders and instead provide a curated assortment of Basic, Core and New products. We internally design and develop the vast majority of our products, a model we describe as vertical sourcing, which gives us control to deliver consistent fit, quality and cost across our products. We leverage our robust customer data to inform purchasing decisions and have the flexibility to respond quickly to the latest sales trends and incorporate customer feedback to deliver the product our customer wants. Further, we utilize a read-and-react testing approach with shallow initial buys to iterate our New product offering, thus minimizing fashion and inventory risk. Our merchandising strategy has enabled us to generate approximately 80% of our net sales from products sold at regular price, which we define as products sold at initial ticket price or with a standard marketing promotion (e.g., "Buy One Get One 50% Off"). We believe our data-driven approach will continue to drive market growth and market share gains with our rapidly growing and underserved customer base.

Response to the COVID-19 Pandemic

Commencing in December 2019, the novel strain of coronavirus, COVID-19, spread rapidly throughout the world. The global crisis resulting from the spread of COVID-19 has disrupted, and continues to significantly disrupt, local, regional and global economies and businesses in the United States and internationally. Because apparel retail stores were generally deemed "non-essential" by most federal, state, provincial and local government authorities in North America, our stores had to remain closed or operate on reduced hours; we estimate that in 2020, our stores were open, on a same- store-basis, 47% fewer operating hours than in 2019. COVID-19 has accelerated the secular shift towards e-Commerce as consumers increasingly shopped online amid the temporary store closures, and we believe we were well positioned to serve our customers through our robust e-Commerce platform and accelerated investments in omni-channel offerings such as curbside pickup, buy-online-pickup-in-store ("BOPIS") and ship from store. In response to the COVID-19 pandemic, Torrid proactively implemented various initiatives with a focus on ensuring the health and safety of employees and customers, minimizing the financial impact of COVID-19 and continuing to build the foundation for future growth and profitability. The initiatives implemented include, but are not limited to:

- Accelerated investments in omni-channel offerings and rolled out BOPIS across all U.S. stores in June 2020, and curbside pickup and ship from store in select stores in August 2020;

- Made targeted investments and changes to our process to improve the speed and flexibility of our supply chain including shortening our development cycle by two weeks;
- Leveraged data analytics and insights to tailor marketing and promotional strategies in response to consumer behavior changes related to the ongoing COVID-19 pandemic, allowing us to reduce our CAC by 7% in 2020 from 2019;
- Utilized new technologies to communicate with stores in real time and facilitate virtual store visits for District and Regional Managers;
- Managed expenses by reducing headcount and general and administrative expenses;
- Extended and improved payment terms with vendors and negotiated rent relief, including variable rent leases, for a significant portion of stores; and
- Deferred non-essential capital expenditures and new store opening plans.

Our Financial Performance

We believe our fit-focused product strategy, direct-to-consumer model and passionate team have resulted in high growth and a leading market position over the last several years. We have grown comparable sales for 35 of the last 37 quarters; the only two quarters of decline were in 2020 as a result of the disruption caused by COVID-19. In early 2020, as COVID-19 disrupted our customers' lives, Torrid's business demonstrated resiliency beyond our initial expectations. By May 2020, net sales growth began to rebound even as store traffic remained challenged, as consumers increasingly shifted their spending to online channels. Financial performance in 2020 demonstrates the strong inherent demand for our differentiated product and the resiliency of our business model. Since 2018, we have recorded the following financial results:

- Total active customers grew 11% year-over-year from 3.0 million in 2018 to 3.4 million in 2019. In 2020, total active customers declined by 5% to 3.2 million, as a number of customers held off on making purchases in 2020. Total active customers grew 6% year-over-year from 3.2 million as of May 2, 2020 to 3.4 million as of May 1, 2021;
- Net sales grew 14% year-over-year from $909 million in 2018 to $1,037 million in 2019. In 2020, net sales declined 6% year-over-year to $974 million as significant declines in store-based sales were partially offset by increases in e-Commerce sales. Nevertheless, we estimate Torrid was able to gain market share in women's plus size apparel and intimates in 2020. Net sales grew 108% from $156 million for the three months ended May 2, 2020 to $326 million for the three months ended May 1, 2021;
- Net income declined 52% year-over-year from $87 million in 2018 to $42 million in 2019. In 2020, net income declined 41% year-over-year to $25 million. Net income grew 5% from $12 million for the three months ended May 2, 2020 to $13 million for the three months ended May 1, 2021; and
- Adjusted EBITDA grew 36% year-over-year from $97 million in 2018 to $132 million in 2019, representing a margin increase of 200bps from 11% to 13% during the same time period. In 2020, Adjusted EBITDA declined 24% year-over-year to $101 million driven by temporarily lower gross profit margin and fixed cost deleverage as a result of the challenges presented by COVID-19. Adjusted EBITDA grew from $(8) million for the three months ended May 2, 2020 to $76 million for the three months ended May 1, 2021. For a reconciliation of net income to Adjusted EBITDA, see "Prospectus Summary—Summary Consolidated Historical Financial and Other Data."

(1) Net Sales for the Twelve Months Ended May 1, 2021 calculated as Net Sales of $325.7 million for the three months ended May 1, 2021, plus Net Sales of $973.5 million for 2020, less Net Sales of $156.5 million for the three months ended May 2, 2020.

(2) Net Income for the Twelve Months Ended May 1, 2021 calculated as Net Income of $12.9 million for the three months ended May 1, 2021, plus Net Income of $24.5 million for 2020, less Net Income of $12.3 million for the three months ended May 2, 2020.

(3) Adjusted EBITDA for the Twelve Months Ended May 1, 2021 calculated as Adjusted EBITDA of $75.7 million for the three months ended May 1, 2021, plus Adjusted EBITDA of $100.8 million for 2020, less Adjusted EBITDA of $(8.2) million for the three months ended May 2, 2020.

As of May 1, 2021, we had $202.0 million of outstanding indebtedness, net of unamortized original issue discount and debt financing costs, consisting of term loans under the Original Term Loan Credit Agreement. On June 14, 2021, we entered into the New Term Loan Credit Agreement and used borrowings thereunder to, among other things, repay and terminate the Original Term Loan Credit Agreement. For a description of our debt service obligations, including mandatory repayments, under the New Term Loan Credit Agreement, see "Description of Certain Indebtedness—New Term Loan Credit Agreement."

Our Industry

We believe we are uniquely positioned to capture outsized share in the highly attractive and growing women's plus-size apparel industry.

Large and Rapidly Growing Addressable Market Comprised of 90 Million Plus-Size U.S. Women

The market for women's plus-size apparel and intimates is large and growing. As of December 31, 2019, more than two-thirds of all U.S. women, or 90 million, were plus-size. According to a third-party study we commissioned, the women's plus-size apparel and intimates market was approximately $85 billion in calendar year 2019, compared to the women's straight size market of approximately $96 billion for the same period, and is expected to grow at a 3%-5% CAGR, more than twice the rate of the overall U.S. women's apparel and intimates market. Further, the number of women in this size range is growing fastest among women under 45 as well as women with higher incomes, according to U.S. government agencies. Based on our 3.4 million active customers as of May 1, 2021, we believe Torrid is less than 4% penetrated among U.S. plus-size women and has a significant opportunity to expand share in this growing market.

Plus Size Women Are Significantly Underserved with Untapped Spend Potential

Plus-size women are underserved with apparel and accessories offerings that are characterized by poor fit, plain styling and limited selection. 69% of plus-size women report that it is difficult to find clothing as stylish and attractive as those available to non-plus-size women. For most apparel brands, plus-size is an afterthought as they do not invest time and resources to optimize fit on real plus-size models but rather simply rely upon "grading-up" existing non-plus-size offerings through extended sizing, which leads to poor, inconsistent quality and fit. Most of the existing dedicated plus-size brands target an older consumer or lack the product design and technical capabilities to deliver the fit she wants. We estimate there is currently only one dedicated women's plus-size apparel store for every 51 women's specialty apparel stores. As a result, there were approximately 78,000 plus-size women for each dedicated women's plus-size apparel store, as compared to approximately 700 women for every other women's specialty apparel store. We believe our superior fit, brand experience and our unified commerce strategy position us well to cater to this underserved market.

Due to the lack of options, the plus-size woman underspends on apparel and intimates annually compared to her non-plus-size peers and 78% of plus-size women reported that they would spend more on clothing if they had more options available in their size. We estimate this underspend to be $19 billion, implying a 22% embedded wallet growth opportunity beyond the $85 billion calendar year 2019 women's plus-size apparel and intimates market, for a total addressable market size of $104 billion. We believe Torrid has a significant opportunity to unlock this additional, untapped spend potential and increase overall market share by better serving plus-size customers.

Significant Growth in Digital and Omni-Channel Shopping

The majority of all apparel purchases in the United States occur in stores. However, consumers have increasingly been shopping for apparel online, a behavior that has meaningfully accelerated during the pandemic. We believe this consumer behavior will continue for the next several years. According to Torrid's estimates based on eMarketer's Apparel & Footwear 2021 data:

- U.S. online apparel sales were $125 billion in calendar year 2019 and are expected to reach $270 billion in calendar year 2024, growing at a CAGR of 17%; and
- Online penetration in apparel has increased from 20% to 26% in the United States from the end of calendar year 2016 through calendar year 2019. U.S. online penetration in apparel is expected to reach 38% in 2021 and 51% in 2024.

Additionally, digital channels play an important role in consumers' offline purchase decisions. Specifically, when asked about their shopping behaviors prior to making a purchase in a physical retail store, 39% of digital consumers visited a brand's website, 36% read customer reviews and 33% attempted to price match the product online, according to BigCommerce's 2018 Omnichannel Buying Report that is based on a global survey of nearly 3,000 digital consumers. We believe retailers that employ an omni-channel strategy offering both a high-quality experiential brick-and-mortar footprint and a compelling online store supported by a strong digital presence and omni-channel offerings such as curbside pickup, BOPIS and ship from store have a competitive advantage in serving potential customers. We believe our unified commerce strategy, which includes 70% of net sales from e-Commerce in 2020 and robust omni-channel functionality, positions Torrid well to succeed in this evolving environment.

Cultural Tailwinds Driving Torrid's Market

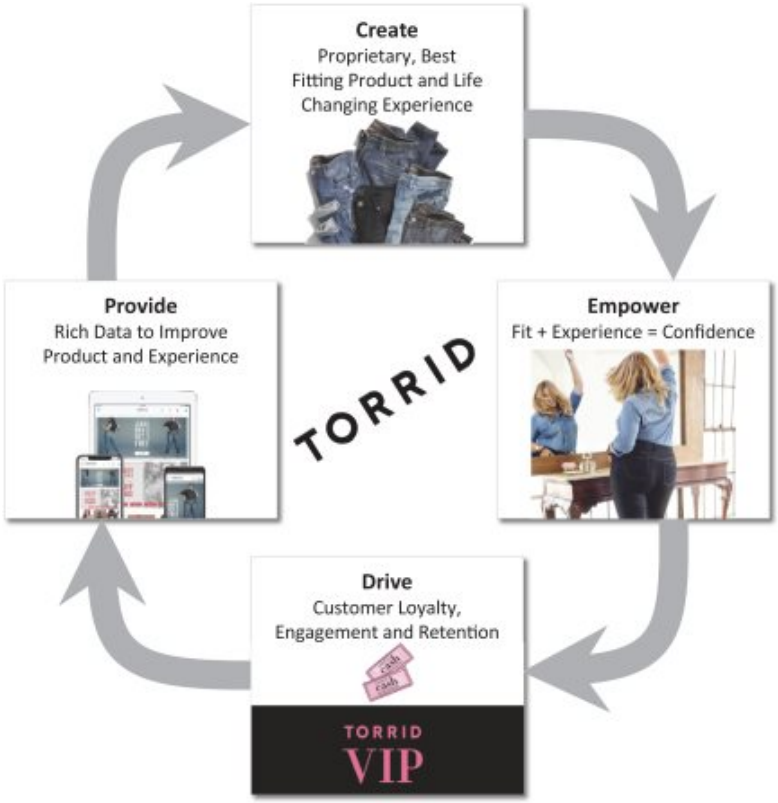
We believe Torrid stands to benefit from thriving cultural movements involving female empowerment, body positivity and socially-influenced purchasing. Growing celebration of femininity, inclusivity and self-identity, along with the emergence of plus-size celebrities and influencers, inspires young curvy customers to demand more flattering and stylish clothing they are proud to wear. At the same time, younger generations are embracing social media platforms, including Instagram, which act as vehicles for community building and discovery. This seamless, constant exchange of community-based inspiration encourages consumers to purchase better-fitting

and youthful clothing that allows for unapologetic self-expression. We believe these cultural shifts will continue to support the growth of the women's plus-size apparel market.

The Torrid Approach

To achieve our mission of being the best direct-to-consumer plus-size apparel and intimates brand, we have created a proprietary fit that empowers our customers and drives loyalty. In turn, our loyal customers provide us with a rich set of data that allows us to improve our product and experience, thus creating a virtuous cycle that reinforces our leading position in plus-size apparel and intimates.

A FIT-ENABLED VIRTUOUS CYCLE



FIT TO PERFECTION

- We provide a fit she knew she wanted but never had access to;
- We accomplish this by fitting every single article of clothing we produce on a real woman, tailoring for her special needs, not simply "grading up" non-plus-size apparel;
- We utilize a proprietary sizing process that is constantly updated through data and our continuous customer feedback loop, until we fit to perfection; and
- We deliver unparalleled technical fit combined with unapologetic attitude and style.

Competitive Strengths

We attribute our continued success to the following competitive strengths:

First at Fit. Our capability to deliver the best fit for the curvy woman is unrivaled in the industry and hard to replicate. We have a maniacal focus on fit across our entire organization, which is rooted in our recognition of the importance of fit to our customer. Our team of highly skilled designers, artists and product engineers internally design and develop products that represented approximately 89% of our net sales in 2020. Unlike other brands, we do not rely on mannequins during the fit process, but rather fit all of our products on full-time plus-size fit models, our staff, and often our most loyal customers. We have developed our differentiated technical fit by building and continuously refining a database of fit specifications derived from testing, measuring and cataloging over 13,000 garments each year on our fit models. The discipline and rigor of our fit process differentiates our approach to technical design. We also utilize proprietary fabrics specifically engineered to enhance the fit for the plus-size woman. Our vertical sourcing model gives us control to deliver consistent fit, quality and cost, and allows us to incorporate customer feedback quickly and effectively. Our customers often start their Torrid journey in fit-critical categories such as denim and intimates that lead to increased loyalty and drive higher LTV over time. In intimates, we leverage our design and engineering expertise to develop highly

technical bra features, such as our patent-pending back smoothing technology and recently introduced wire free bra that require significant investment and are not easy to replicate by competitors. We believe our differentiated ability to deliver consistent fit and quality combined with style and comfort represents a significant competitive advantage.

Differentiated, Leading Brand for the Plus-Size Woman. Torrid is the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America by net sales. We grew our net sales by 8% CAGR between 2017 and 2020, making us among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market. We believe many of our customers form a deep emotional connection with our brand, as their discovery of Torrid is often the first time they have felt truly understood and well-served by an apparel company. The Torrid brand represents a distinctive combination of high quality, stylish and well-fitting products combined with a brand experience that makes the plus-size woman feel confident and empowered. Our customers engage with us across multiple channels including online, in-store, through community events, surveys and on social media, with many becoming our biggest brand advocates. Our brand satisfaction is among the highest for apparel brands, as illustrated by our leading NPS of 55, nearly two times the peer average score of 30. We believe this significant brand value will facilitate sustainable net sales growth and market share gains over time.

A Deep Connection to Our Loyal and Passionate Customer. We form long-standing relationships with our customers, who are empowered by their Torrid experience and reward us with their loyalty. In 2020, 2.9 million out of our approximately 3.2 million active customers were members of our loyalty program, accounting for 95% of net sales. Members of the top two tiers of our loyalty program, Torrid VIP and Loyalist, are our most loyal customers who purchase from us more often and spend significantly more than the average customer, accounting for an outsized share of net sales. In 2020, Torrid VIP and Loyalist members accounted for 16% of active customers and 41% of net sales. On average, they purchased more than 9 times per year and spent approximately $750 during the same period. Our customers' repeat purchasing behavior is evidenced by our strong net sales retention. In 2020, we retained 82% of net sales from the prior year's identifiable customers, despite the challenges presented by the COVID-19 pandemic. While the net sales retention was down from 96% in 2019 due to the COVID-19 pandemic, we expect net sales retention to recover in future periods. As a result of our strong customer loyalty and net sales retention, we generate high customer LTV, which we intend to leverage to help drive future growth.

Dynamic Direct-to-Consumer Business Model. Our unified commerce platform provides our customer with an inspiring shopping experience whenever and wherever she chooses to shop with us. We market directly to consumers via our e-Commerce platform, which accounted for 70% of sales in 2020, and our physical footprint of 608 stores as of May 1, 2021. Our broad digital ecosystem—from our engaging e-Commerce website and mobile app to social media channels and our *Torrid Rewards* loyalty program—allows us to better connect, engage, track and service customers. This ecosystem also provides robust quantitative and qualitative customer data that we use to inform all aspects of our operations, from product development, to merchandising and marketing. E-Commerce sales represented 42% and 48% of net sales in 2018 and 2019, respectively, having grown by 28% in 2018 and 28% in 2019. In 2020, e-Commerce sales represented 70% of net sales as e-Commerce sales grew by 38% and store sales declined as a result of temporary store closures and a slowdown in store traffic associated with the global COVID-19 pandemic. For the twelve months ended May 1, 2021, e-Commerce sales represented 69% of net sales. Our stores are designed to deliver an immersive brand and fit discovery experience further supported by personal connection with store associates who act as brand ambassadors. Our stores also act as a low cost source of new customer acquisition, requiring a small upfront investment that is quickly paid back. Our e-Commerce platform and store base complement and drive traffic to one another. Once she discovers her size in store, she increasingly shops online with us as she knows she can rely on the consistency of our fit. Our consistent product fit and the unified experience between our stores and e-Commerce platform creates a powerful flywheel effect that results in low CAC, high repeat purchasing behavior and high customer LTV.

Data-Driven, Low-Risk Merchandising Model. We employ a data-driven approach to design, merchandising and inventory planning and allocation to deliver high quality products that combine the fit, style and attitude that our customer wants. We have excellent visibility into our customer's preferences through her purchase history and our outsized share of her apparel wallet. We leverage this robust customer data along with market trends to inform all purchasing decisions. Through our vertical sourcing model, we have the flexibility to respond quickly to the latest sales trends and make adjustments to our current offering based on customer feedback to deliver product our customer wants. We focus on fit, not fashion, and do not rely on being a fashion leader. We have a low-risk assortment that is anchored by our recurring, fit-focused offering of Basics and Core styles, which together represented approximately 86% of net sales in 2020. New product, which represents new or emerging styles, accounted for the remaining approximately 14% of net sales in 2020. We utilize a read-and-react testing approach with shallow initial buys and data-driven repurchasing decisions to iterate our New product offering, thus minimizing fashion and inventory risk.

Proven, Experienced Management Team and Mission-Driven Culture. We have created a company culture focused on attracting, training, retaining and developing talent that does not settle for the low expectations historically associated with the women's plus-size apparel market. Approximately 93% of our employees identify as female. Our organization is comprised primarily of women who are also customers and align with our goal to empower curvy women to love the way they look and feel. In addition, they embody our philosophy and dedication to our product and serve as brand ambassadors on a daily basis. Our team is led by our Chief Executive Officer, Liz Muñoz, who is a direct-to-consumer brand veteran and joined the Company in January 2010 after having served as the President of Lucky Brand. Liz has a strong background in product fit and design, having spent years fitting clothing, and later leading the design and merchandising efforts at both Lucky Brand and Torrid. We employ a highly talented team of 446 corporate employees, comprised of skilled and experienced apparel and direct-to-consumer executives, combined with artists, designers, merchants, product engineers and data analysts.

Growth Strategies

We believe we have a significant opportunity to increase market share in the massive and growing plus size apparel and intimates markets. We intend to continue driving growth in our business through the following strategies:

Grow Torrid Curve

We plan to accelerate growth of Torrid Curve®, our line of bras and other intimates, activewear, loungewear and sleepwear tailored specifically to a plus-size customer, through targeted investments in marketing and product innovation. The same discipline and rigor of our fit process for apparel is applied when designing and developing our Torrid Curve products. In intimates, we leverage our design and engineering expertise to develop highly technical bra features, such as our patent-pending back smoothing technology and recently introduced wire free bra that require significant investment and are not easily replicated by competitors. Our deep connection with our customer has guided our product development pipeline so that we build products she needs and wants. For example, the idea for our back smoothing technology came from direct feedback from customers who expressed their desire for a solution to address her specific needs. We leverage this community to test our new products and perfect their development before launch. According to our estimates, the intimates market is growing at a rate of 8% which is 3 percentage points higher than the growth of the women's plus-size apparel market, according to Statista. Our customers' sizes are often not sold by leading intimates brands and we believe existing product options fail to combine functionality with appealing design. Intimates is a fast-growing category with significant incremental penetration opportunity both within our existing Torrid customer base and with new customers. Bras help attract customers to our brand; bras are, behind tops, the second most frequent item in a new customer's first purchase. For 2019 and 2020, on average, customers who have bought Torrid Curve products spent 3x more than someone who did not and their retention rates were 1.5x higher. We believe Torrid Curve will be a meaningful driver of our growth in the future.

Attract New Customers to Torrid

We believe there is a clear path to further increasing brand awareness and acquiring new customers through an integrated digital marketing and strategic store expansion strategy.

- *Increase Brand Awareness and Accelerate Customer Acquisition Across Channels*. We intend to grow our brand awareness among plus-size women from approximately 31% as of April 2021, by making incremental investments in our marketing spend, which was only approximately 5.3% of net sales in 2020. We believe we can do so profitably given our high ratio of LTV to CAC. We expect to further drive brand awareness, engagement and conversion through targeted investments in performance and brand marketing, including paid search, retargeting, social media campaigns, plus-size community-based events, in-store experiences and product collaborations.
- *Grow With Disciplined Store Expansion*. We believe the plus-size woman is dramatically underserved in her choice of apparel and intimates offerings and as a result we plan to capitalize on the opportunity to selectively grow our store footprint. Based on our proven, profitable store model, we intend to continue to capture this underpenetrated market with a disciplined roll-out of new stores that drive both in-store and e-Commerce sales. Our stores generate a high level of positive contribution and act as a low cost source of new customer acquisition, requiring a small upfront investment of capital expenditures and pre-opening expenses that is quickly paid back as a result of our customers' high repeat purchasing behavior across channels. We target payback periods of less than two years, in line with our historical openings.

Deepen Customer Relationships to Increase Wallet Share

We intend to continue to leverage the strength of our customer relationships and data, which allowed us to attribute approximately 98% of net sales in 2020 to individual customers. This robust customer data allows us to better engage with customers, increase retention and drive spend per customer.

- *Expand Assortment Based on Trusted Fit*. We intend to leverage data and our customer's trust in our proprietary fit and style to enhance core entry points, such as denim and intimates, and broaden and deepen our offering in nascent categories, including activewear, workwear, special occasion and footwear.
- *Leverage Our Data*. We plan to further deepen customer relationships with personalization, customization and clienteling across channels in ways that we are not currently doing today. Leveraging loyalty program data, we seek to tailor our marketing messages, promotions and product recommendations to her preferences, which we believe will further drive conversion online and in stores and increase our share of her wallet.
- *Grow Loyalty Program Engagement*. As of May 1, 2021, 90% of our active customers are members of our loyalty program and we intend to continuously find new ways to engage her and bring her back to our site, such as increased personalization, dedicated loyalty member events, and opportunities for accelerated tier migration, which we believe will deepen her loyalty and continue to drive recurring purchasing behavior.
- *Enhance Customer Experience*. We believe near-term initiatives, both online and in-store, will greatly enhance the ease of transaction and overall experience for customers. We are upgrading the functionality and features of our mobile app to deliver enhanced personalization such as size recommendations and complementary items, to expedite purchase decisions and increase order value. Further, we have accelerated our investments in and will continue to invest in omni-channel offerings such as curbside pickup, BOPIS and ship from store to drive both customer acquisition and retention.
- *Implement New Technology*. We have continued to enhance e-Commerce functionality with tools for product recommendations, enhanced payment options (e.g., buy now pay later), and improved returns process to drive conversion and increase order value. We also believe there is opportunity to further

leverage artificial intelligence and machine-learning tools to drive better customer segmentation, leading to more efficient customer acquisition and retention marketing.

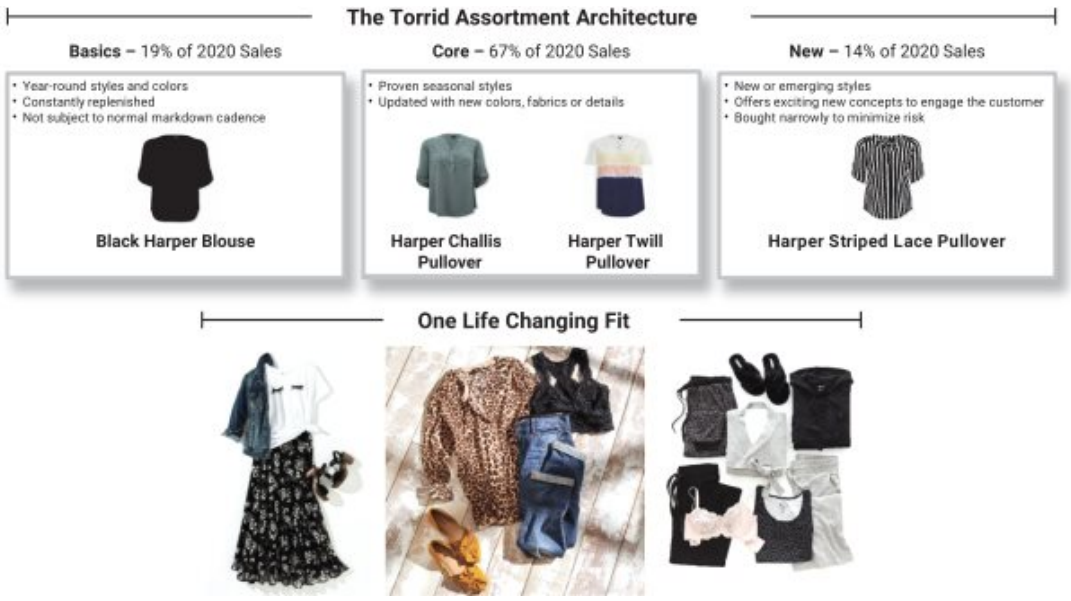
Expand Operating Margins by Leveraging Completed Investments in Data and Multidisciplinary Teams

We have created a highly scalable foundation for growth through significant infrastructure investments. We will continue to strategically invest in our business while driving operational excellence and leveraging our fixed cost base to grow profitability.

- *Leverage Data to Improve Pricing and Promotion Strategy*. In addition to our robust merchandising team, we plan to continue to leverage data across the organization in various ways, allowing us to optimize pricing and promotional activity, including personalized promotions, to drive increased purchases and higher merchandise margins.
- *Enhance Supply Chain Flexibility*. We have developed internal processes that we refer to as our "speed model," including pre-positioning fabrics with our third-party factory partners to accelerate product replenishment cycles, improve inventory turnover and drive higher margin sales.
- *Leverage Cost Base*. We believe our scalable infrastructure and team will yield increasing operational leverage as our sales continue to grow relative to our cost base.

Product

Product Offering



We offer a full product assortment that addresses our customers' entire closet, including tops, bottoms, denim, dresses, intimates, shoes and accessories. We believe our products not only provide an unparalleled technical fit, but also have the style and attitude that enable our customers to dress like her non-plus-size friends. We believe we are a destination for our customers to shop for every occasion, from casual to dressy, and everything in between.

While we aim to bring her the latest in fashion trends, we do not rely on being a fashion leader. Our offering is built on the foundation of Basics (approximately 19% of net sales in 2020) that represent year-round styles and

colors that are constantly replenished and are not subject to a typical markdown cadence. Our Core offering (approximately 67% of net sales in 2020) includes products that are on-trend interpretations of our basic merchandise that we update with new fabrics, prints, embellishments or features. For example, the Harper Blouse represents a Basics item with Core iterations that feature embellishments such as zippers or button-loops. Approximately 14% of our net sales in 2020 were derived from New product, our trend driven items that incorporate the latest fashions available in the broader market to excite and engage our customer but are bought narrowly and reordered as demand dictates to minimize inventory risk.

We are market leaders in bottoms and intimates, both attractive growth categories where fit is critical. These categories serve as entry point to the Torrid brand and drive customer loyalty. We believe the design of our intimates line, Torrid Curve, inspires confidence and allows our customer to move in effortless comfort throughout her day while feeling confident and sexy. Over the course of almost two decades, Torrid has developed the requisite design and engineering expertise for the highly technical bra category through a rigorous in-house research and development process. We have patent applications pending for our 360° Back Smoothing Bras and our Power Mesh Panels for Tummy-Flattening Pants, both exclusive creations for the plus-size woman. Most other brands do not offer compelling intimates for curvy women due to a lack of focus and scale in plus-size, which results in a lack of investment in the technical product capabilities required in order to execute well. Because of our focus, we have developed a number of technical features, such as a heavier gauge of wire in our bras, which are specifically engineered for the comfort of plus-size women. Consequently, we believe Torrid Curve represents an attractive opportunity to realize growth in a particularly underserved category of the women's plus-size apparel market. We believe Torrid Curve will be a meaningful driver of our growth in the future.

Product Design and Development

We are relentlessly focused on creating youthful, unapologetically sexy products specifically for the plus-size woman. We design, develop and merchandise almost all of our products in-house, under the Torrid® and Torrid Curve® brand names. Our products are exclusive to us, with few exceptions, and provide a consistent quality and fit that we believe she cannot find elsewhere. Our product development is led by a team of more than sixty highly skilled designers, artists and product engineers. Our core competency is our differentiated, market-leading fit that we achieve through the following strategies:

- Maniacal focus on fit across our entire organization;

- Differentiated technical fit created through building and continuously refining a database of fit specifications derived from testing, measuring and cataloging approximately garments annually on our fit models;
- Proprietary fabrics specifically engineered to enhance the fit for the plus-size woman;
- Fit all of our products on full-time fit models and our staff, not mannequins; and
- We test new fabrics, new silhouettes and new product lines on our community of loyal customers before launch.

Additionally, we employ a data-driven approach to design and product development, proactively and quickly incorporating sales and operational performance information alongside customer feedback from thousands of product reviews, and our ongoing dialogue with customers through social media and customer surveys.

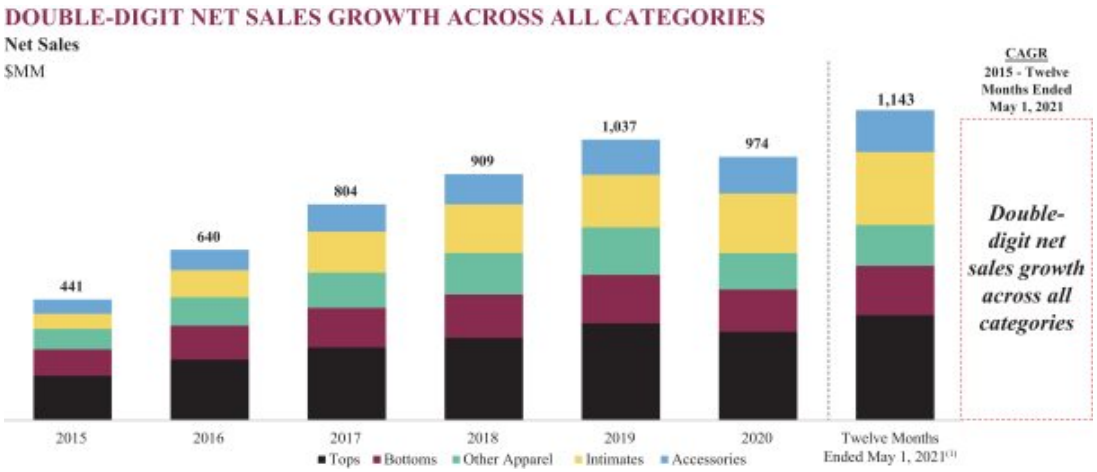
Merchandise Planning

Our strategy is built around a consistent and stable base of Core products that provide our customer with year round style. At the same time, we introduce new lines of merchandise approximately 16 times per year, thus providing a consistent flow of fresh merchandise to keep our customer engaged, encourage repeat business and attract new customers. Unlike brands that do not focus exclusively on plus-size, we have the requisite scale to order in sufficient quantities and effectively manage a continuously refreshed plus-size inventory.

We have excellent visibility into our customers' preferences through high participation in our robust loyalty program. We regularly use the depth and breadth of our data to assess sales, market trends and new product development to inform purchasing decisions. As a result, we have the flexibility to react quickly to product performance, make in-season inventory purchasing adjustments where possible and to respond to the latest sales trends by ordering or re-ordering as appropriate. Further, we utilize a read-and-react testing approach, with small purchase quantities, to introduce our New product offering, minimizing fashion risk. This strategy also allows us to mitigate inventory risk, particularly for new products or styles, while simultaneously providing our customers access to current fashion. Lastly, 86% of our sales in 2020 were from our Basic and Core categories, which we define as product that is either sold year round or a variation of a style sold in previous seasons. We believe this nature of our assortment enables us to more effectively predict demand for our product and better manage inventory risk.

During 2018 and 2019, we enhanced our merchandise planning and inventory management functions by building out the senior management team with a newly appointed Chief Operating Officer, a newly created position for the Chief Merchandising and Product Officer and the addition of three Merchandising Vice Presidents for each category: apparel, accessories and intimates. We have since introduced rigorous discipline around inventory performance by establishing clear guidelines on in-season product performance, item-level assortment planning and formal product hindsight reviews.

As we have executed on these strategies, we have seen substantial growth across all major product categories, as shown in the graph below, and healthy gross profit margin performance. Our disciplined planning and product lifecycle management strategies enable effective in-season inventory management to maximize inventory turn and productivity. Through these practices, we are able to limit markdowns, which we define as permanent price reductions, allowing us to maximize our gross profit margin.



(1) Net Sales for the Twelve Months Ended May 1, 2021 calculated as Net Sales of $325.7 million for the three months ended May 1, 2021, plus Net Sales of $973.5 million for 2020, less Net Sales of $156.5 million for the three months ended May 2, 2020.

Customers

We believe that our brand has broad appeal and attracts stylish women across a range of ages, ethnicities and sizes. Our typical customer is an employed, youthful woman between the ages of 25 and 40 years old with above-average annual household income (average of approximately $84,000), and wears sizes 10 to 30 (average of size 18). Approximately 58% of our customers are under 40 years old and the ethnic composition of our customer base parallels that of the U.S. population. She leads a busy life, is short on time and wants a curated presentation of quality apparel, intimates and accessories that are on trend and fit her well. This customer is significantly underserved as most plus-size apparel and accessories offerings are characterized by poor fit, plain styling and limited selection. Due to the lack of options, the plus-size woman underspends on apparel and intimates annually compared to her non-plus-size peers and 78% of plus-size women reported that they would spend more on clothing if they had more options available in their size. We estimate this underspend to be $19 billion, implying a 22% embedded wallet growth opportunity beyond the $85 billion 2019 women's plus-size apparel and intimates market, for a total addressable market size of $104 billion. We believe Torrid has a significant opportunity to unlock this additional, untapped spend potential by better serving plus-size customers.

Torrid Loyalty and Torrid Credit Card Programs

We drive customer loyalty and engagement through our three-tier loyalty program. Members earn one point for every dollar spent and receive a reward for every 250 points collected. The program is tiered by annual customer spend and offers incremental perks with each tier. Torrid Rewards members are those who spend up to $499 annually, while members of Torrid Loyalist spend $500+ annually and Torrid VIP spend $1,000+ annually. We inspire loyalty by continuously engaging with our loyalty members through birthday gifts, social media, dedicated customer service lines and exclusive events.

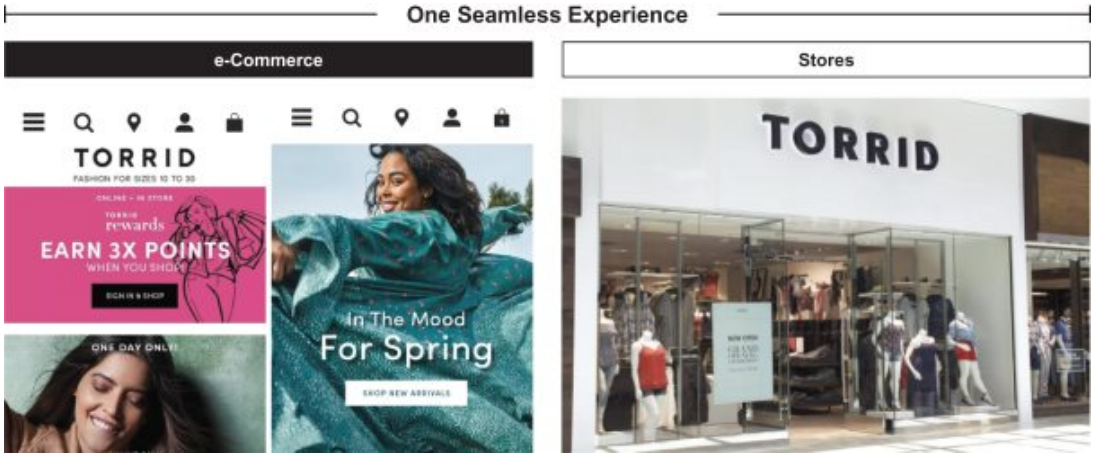
Our customers are exceptionally loyal: The 2.9 million active customers in our loyalty program generated 95% of net sales in 2020.

Members of the top two tiers of our loyalty program, Torrid VIP and Loyalist, are our most loyal customers who purchase from us more often and spend significantly more than the average customer, accounting for an outsized share of net sales. In 2020, Torrid VIP and Loyalist members accounted for 16% of active customers and 41% of net sales. On average, they purchased more than 9 times per year and spent approximately $750 during the same period.

Additionally, we provide our customers with access to our Torrid Credit Card Program. Torrid Credit Card holders are automatically enrolled in the Torrid Rewards program through which customers receive points, discounts and other perks. As a result, Torrid Credit Card holders are among our most loyal and valuable customers. Our credit card program encourages customer loyalty, serves a valuable source for data and allows us to further invest in marketing efforts without exposure to incremental credit risk as our bank partner substantially manages all administrative processes, including underwriting, and bears the credit balance risk.

Our loyalty and Torrid Credit Card programs provide us with a strong ability to attribute sales and behavioral data to individual customers, which informs our decision making process. By putting the customer insights into action, we are able to more effectively engage with our customer to drive both sales growth and retention.

Unified Commerce Platform



Through our unified commerce platform, which includes our e-Commerce and retail stores, we deliver a seamless brand experience to our customer wherever and whenever she chooses to shop. We are agnostic to the channel where our customers choose to shop, as we are highly profitable across both e-Commerce and store channels. We deliver a consistent brand message by coordinating our strategies across channels, which we believe influences our customers' buying decisions. This customer-centric strategy enhances customer acquisition, retention and customer lifetime value. Our e-Commerce and store channels complement and drive traffic to one another, creating more loyal omni-channel customers who spent more than 3.2 times what single channel customers spent in 2020.

e-Commerce

Our e-Commerce channel is central to our unified commerce platform and continues to grow rapidly. Our online store provides customers with a highly engaging shopping experience featuring access to our full product assortment, an aesthetically rich and easily navigable website and seamless ordering and fulfillment. Additionally, we successfully use our e-Commerce platform to expand our selection of styles, colors and merchandise meaningfully beyond what is available in our stores, making the online shopping experience highly engaging and additive to our in-store experience. Our website and mobile app feature updates on new collections, guidance on how to wear and put together outfits and a selection of web-only exclusives, all of which facilitate customer engagement and interaction.

We grew e-Commerce revenue by 28% year-over-year in 2019, to represent 48% of total net sales. In 2020, e-Commerce sales represented 70% of net sales as e-Commerce sales grew by 38% and store sales declined as a

result of temporary store closures and a slowdown in store traffic associated with the global COVID-19 pandemic. For the twelve months ended May 1, 2021, e-Commerce sales represented 69% of net sales. Our growth has been multi-faceted, as we have seen gains across many of our key e-Commerce performance indicators, including traffic, orders, conversion rate and average order value. For example, during 2020, we generated, on average, 5.9 million unique visitors per month. The number of monthly unique visitors increased 12% for the final six months of 2020 compared to the final six months of 2019, reflecting the increasing appeal of our site. Our emphasis on fit contributed to an e-Commerce return rate of 9% in 2020, whereas return rates for e-Commerce purchases generally can be as high as 30%, according to Optoro's research. In 2020, 58% of all new customers made their first purchase online.

We aim to be wherever she is and make the transaction process as convenient as possible. As a result, a majority of our e-Commerce orders and a material portion of all orders are placed directly from her phone. We are upgrading the functionality and features of our mobile app to deliver enhanced personalization such as allowing her to find her recommended size while suggesting complementary items to expedite purchase decisions and increase frequency and order size.

Stores

Our stores are highly valuable strategic assets that remain core to our strategy and continue to play an important role in our customer acquisition strategy. We have an attractive fleet of stores that is growing and generate a high level of positive contribution and provide our customers with a differentiated in-store experience that has previously not been available to her. We provide a sophisticated presentation of products that has an emphasis on outfits, which presents creative styling ideas to our customer and encourages incremental spend. Our stores include large, comfortable fitting rooms with features, such as cooling fans, that are specifically suited for our customers' needs. Additionally, our stores offer customers the opportunity to connect with a like-minded community, through exclusive in-store events and interactions with our store associates, who act as brand ambassadors and are often customers themselves. We believe our stores enhance brand awareness, drive traffic to our e-Commerce platform and encourage a growing number of customers to shop across multiple channels of our unified commerce platform. In 2020, 42% of all new customers made their first purchase in-store.

As of May 1, 2021, we operated 608 stores in 50 U.S. states, Puerto Rico and Canada. Our stores are located primarily in premium malls, shopping plazas, lifestyle centers and outlet locations, and the quality of our real estate locations is high as substantially all of our stores are located in A and B malls or off-mall locations. Our stores are designed to deliver an immersive fit discovery experience and serve as desirable customer destinations. As a result, they are less dependent on broader traffic trends and perform consistently across all formats. Our average store size is approximately 3,000 square feet and in 2019, prior to the onset of COVID-19, nearly all of

our 607 locations generated positive store-level contribution, excluding any incremental contribution from purchases on our e-Commerce platform from customers of these stores. Our stores are highly productive and have attractive store economics; they require a small upfront investment and have historically produced positive store-level contribution in the first year of operations, resulting in rapid payback and highly attractive cash-on-cash returns. New stores cost approximately $212,000 to open, including net capital expenditures and pre-opening expenses and we target payback periods of less than two years.

We believe we have a significant opportunity to profitably grow our store footprint and unlock untapped spend potential from underserved plus-size women. As of 2018, we estimate there is only one dedicated women's plus-size apparel store for every 51 women's specialty apparel stores. As a result, there were approximately 78,000 plus-size women for each dedicated women's apparel store, as compared to 700 women for each other women's specialty apparel store. Based on our proven, successful store model, we intend to continue to capture this underpenetrated market with a disciplined roll-out of new stores that drive both in-store and e-Commerce sales.

We believe our real estate selection process allows us the flexibility to profitably grow our footprint while mitigating risk. We conduct regular real estate committee meetings, comprised of both operational and financial constituents, where decisions are made on new and open real estate projects, including remodels, relocations and new stores. Our committee routinely evaluates the financial return on proposed investments utilizing detailed pro forma projections on a store-level basis. We typically commit to a lease approximately four months before a store is scheduled to open, which we believe allows us to respond quickly to changing market conditions. In 2019, 46 leases were on variable rent structures which represented 8% of total leases. In 2020, we transitioned an additional 87 leases to variable rent structures. As of May 1, 2021, 22% of our total leases were on variable rent structures, providing additional flexibility to our store fleet going forward.

People and Culture

We have created a company culture focused on attracting, training and developing talent. Our work environment is open and collaborative with a flat organizational structure that facilitates efficient decision making. We believe that our rich culture of inclusion and diversity enables us to create, develop and fully leverage the strengths of our workforce to exceed customer expectations and meet our growth objectives. Approximately 93% of our employees identify as female, and many are also customers who believe in our mission to empower curvy women to love the way they look and feel. Additionally, we embrace the diversity of our employees and believe that diverse and inclusive teams at all levels across the organization strengthen our ability to serve our customers. Nearly 50% of our employees identify as minorities. In 2020, we established our Diversity & Inclusion Committee, which seeks to create a more equitable and inclusive workplace through open dialogue, training, recruiting, and retaining diverse talent.

The goal of creating a welcoming and supportive environment spans our full organization from our headquarters and distribution centers to our 608 stores. We believe that our in-store brand ambassadors are critical to our success and often represent the face of our organization to our customers. We empower our managers and in-store brand ambassadors to deliver a superior shopping experience. We provide thorough product- and fit-oriented training that aims to strengthen our brand experience in the store. We also provide our in-store brand ambassadors with sales and key performance data that help them optimize their store's performance and foster a culture of accountability. Communications with our store personnel is a critical channel for valuable product and customer feedback. We believe we have established effective two-way lines of communication throughout our organization, including using new technologies to communicate with stores in real time and routinely synthesize store insights and customer feedback from the field to influence decision making.

As of May 1, 2021, we employed 2,047 full-time and 5,261 part-time employees. Of these employees, 446 are employed in our headquarters in City of Industry, California and 6,862 are employed in our stores and distribution centers. Our number of employees, particularly part-time employees, fluctuates depending upon

seasonal needs. Our employees are not represented by a labor union and are not party to a collective bargaining agreement.

Our talent strategy is to attract, engage and retain the best and most qualified talent to create a diverse and inclusive workforce. We offer competitive compensation packages that are based on market-specific data for comparable roles and geographic locations. We believe in rewarding high performance and seek to design plans and programs to support this culture. To further support the advancement of our employees, we invest in a wide range of training and development opportunities at all levels across the organization, including through both online and instructor-led internal programs, as well as third-party programs. We regularly collect feedback from our employees to better understand and improve our learning and development offerings to meet their needs. To ensure we provide a rich and rewarding experience for our employees, we monitor culture and engagement to build on the competencies that are important for our future success. We routinely engage independent third parties to conduct cultural and employee engagement surveys. These include corporate culture assessments, real-time feedback on employee engagement, and a periodic holistic survey of employee well-being focused on physical, emotional, social and financial health.

Employee safety remains our top priority. We develop and administer company-wide policies to ensure the safety of each team member and compliance with Occupational Safety and Health Administration standards. In 2020, the COVID-19 pandemic brought unprecedented challenges to our business, our communities, and our teams. As we managed through these challenges, we prioritized the health, safety and overall well-being of our teams and customers. At each of our retail stores, our headquarters and our West Jefferson, Ohio, distribution center, we continue to follow applicable local, state, and national government regulations, laws, and recommended guidance. In response to COVID-19 we:

- added work from home flexibility;
- adjusted attendance policies to encourage those who are sick to stay home;
- increased cleaning protocols across all locations;
- initiated regular communication regarding impacts of the COVID-19 pandemic, including health and safety protocols and procedures;
- established new physical distancing procedures for employees who need to be onsite;
- provided additional personal protective equipment and cleaning supplies;
- implemented protocols to address actual and suspected COVID-19 cases and potential exposure;
- prohibited all domestic and international non-essential travel for all employees; and
- required masks to be worn in all locations where allowed by local law.

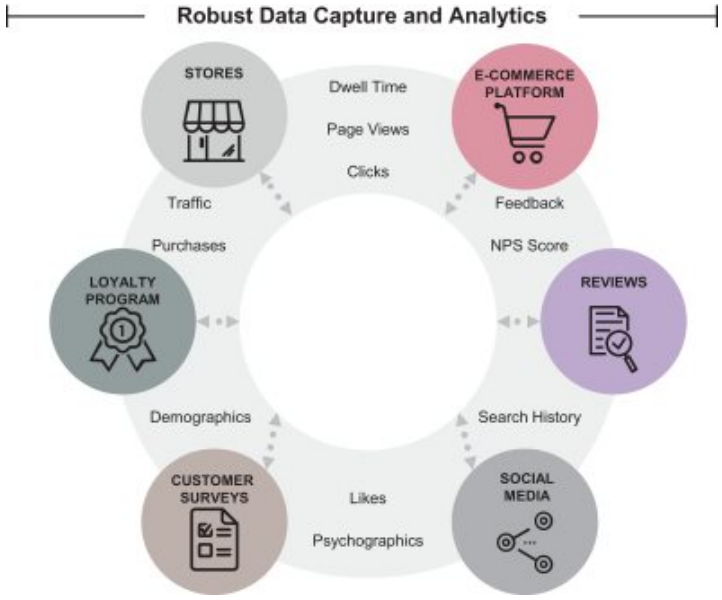
An important part of our culture is our focus on giving back to the community, which we do primarily through our Torrid Foundation that we established in 2017. The mission of the Torrid Foundation is to support various nonprofit organizations dedicated to helping women and changing lives for our customers and their diverse communities. The funds utilized in these efforts are raised from customer donations, including whole-dollar sale round-ups, and a portion of proceeds from certain product collaborations like our Breast Cancer Awareness Collection. In 2020, the Torrid Foundation has raised over $1.2 million in support of partner organizations dedicated to educating and empowering women.

Data Analytics

We have a significant volume of customer and transaction data, collected from a variety of sources, including e-Commerce and in-store interactions, our loyalty program, social media and customer surveys. For example, we have the ability to track page views, search history, clicks, linger time and purchase route for

visitors to our e-Commerce platform. We use our data to drive decision making across the organization. We have achieved one of the industry-leading data capture rates, driven by our high loyalty program participation, which enabled us to attribute approximately 98% of Torrid net sales to an individual customer in 2020. This customer data is based on information provided by customers who have opted-in to be part of our loyalty program. Our extensive database contains valuable customer information that helps us better market to our customers.

We have significant visibility into our customers' transaction behavior, including purchases made across our channels. We use our customer database to acquire, develop and retain customers. We can identify customers who purchase products regardless of whether they shop on our e-Commerce platform or in-store. We are beginning to leverage this customer database to drive data analysis and insights that we use in managing our business. For example, to grow the penetration of intimates sales, we are able to offer a promotion targeted at customers who have bought our apparel but not our intimates, which encourages shopping across categories. We believe our robust use of customer data and our data insight capabilities present an opportunity for us to continue to increase spend per customer.



Marketing and Advertising

We promote a message of inclusivity that empowers all women to love the way they look and feel. Our brand inspires women to feel confident, sexy and youthful like they never have before. We believe our brand messaging built around our fit resonates with the attitudes of younger generations who are frustrated with being ignored by other brands. Our marketing collateral intentionally represents the diversity of our customer base, including women of all sizes from 10 to 30, and communicates the confidence and sexiness our product is intended to deliver.

We use a variety of marketing and advertising mediums to increase brand awareness, acquire new customers, and drive repeat purchases across our channels. These programs include our online marketing, such as paid search and social media, product listing ads and retargeting, combined with direct mail, store marketing and public relations initiatives. Further, we collaborate with other leading brands, including Betsey Johnson, Disney, and Warner Brothers to create capsule collections to reach new customers and increase our brand awareness. We strengthen the connection with our most engaged customers through special events featuring plus-size models,

celebrities, bloggers and other influencers. We use our customer database to strategically optimize the value of our marketing investments across our customer base and channels. This enables us to efficiently acquire new customers, effectively market to repeat customers and reactivate lapsed customers.

Our investments in digital and physical marketing drive customer acquisition and engagement across all of our channels. We coordinate the introduction of our collections across our e-Commerce platform and stores, allowing a customer to experience a consistent brand message wherever and whenever she chooses to shop. We have a large and growing following on our social media channels, including Facebook, Instagram, Pinterest and Twitter. For example, we have nearly 1 million followers on Instagram and our engagement rate is over 90% higher than our competitors, which include Lane Bryant, Eloquii, Nordstrom, Third Love and Old Navy. We calculate the engagement rate based on the average engagement (likes and comments) divided by total followers. We use these channels to communicate with our customers, disseminate our outbound marketing messages and collect feedback about their lifestyles and product preferences. We believe this direct dialog with our customers allows us to communicate with them in a way that increases their loyalty to our brand.

We have strategically increased our marketing investment to continue to propel the growth of our business. From 2018 to 2020, we have increased our marketing spend from $48.8 million to $51.4 million, representing a percentage of net sales of 5.4% and 5.3%, respectively. This investment has taken place across various marketing strategies, including online marketing and direct mail. We believe these coordinated efforts will drive increased brand awareness, leading to higher sales across our unified commerce platform.

Effective Marketing Strategy

Bombshell Denim Campaign

Sourcing and Production

We outsource the manufacturing of our products, which eliminates the need to own or operate manufacturing facilities. Thus, our product sourcing is not dependent on any one manufacturing facility, enabling a flexible and agile approach to sourcing. We internally design and develop the vast majority of our products, a model we describe as vertical sourcing, which gives us control to deliver consistent fit, quality and cost across our products. In 2020, approximately 89% of our products were vertically sourced. The remaining 11% of products are primarily related to certain footwear and accessories categories where we do not control the entire design process. Our focus on vertical sourcing has contributed to growing net sales and increasing gross profit margins.

We have a diversified vendor base. No single supplier accounted for more than 13% of merchandise purchased in 2020. Approximately 96% of our product receipts in 2020 were sourced internationally, primarily from Asia. We plan to continue diversifying our vendor bases by both vendor and geography. We have been able to mitigate the effects of tariffs on Chinese products and we plan to significantly reduce our exposure to vendors

located within China, as evidenced by the decrease in the share of products sourced from China, from 68% in 2019 to 49% in 2020. Though we are decreasing our share of product manufactured in China, our manufacturing partners may source their own raw materials from third parties in other countries, including China. We maintain compliance guidelines for our vendors that dictate various standards including product quality, manufacturing practices, labor compliance and legal compliance. Through third parties, we periodically monitor our factories and suppliers to ensure compliance with these guidelines.

Distribution and Fulfillment

Our unified commerce business model is serviced by our main distribution facility located in West Jefferson, Ohio, with ancillary services provided by additional distribution facilities located in City of Industry, California. We acquired the operations of the fully-functional, state-of-the-art distribution center in West Jefferson, Ohio in 2018. This 750,000 square foot facility is highly automated and we believe is capable of handling our existing and future needs. Additionally, the West Jefferson facility is already equipped with omni-channel capabilities that have enabled our BOPIS rollout while continuing to drive efficient online returns and position us to execute on our unified commerce strategy. Our distribution center in City of Industry is a shared facility. The City of Industry facility will continue to provide ancillary regionalized distribution services to Torrid's West Coast locations.

These facilities manage the transportation, receipt, storage, sorting, packing and distribution of merchandise for our e-Commerce platform and store channels. Stores are replenished at least once per week from these facilities by third-party delivery services. This frequency provides our stores a steady flow of new inventory that helps maintain product freshness and in-stock availability. We believe the investments in our distribution capabilities will provide the infrastructure needed for sustained growth across our unified commerce platform.

Information Systems

We utilize a full range of third-party management information systems to support our store, e-Commerce, merchandising, customer data, financial and real estate business teams.

We utilize these systems to provide us with various functions, including customer relationship management, point-of-sales, inventory management, merchandising support systems, financial reporting, e-Commerce solutions and other systems. We believe these management information services provide us the ability to effectively manage and grow our business.

Seasonality

While the apparel industry is generally seasonal in nature, we have not historically experienced significant seasonal fluctuations in our sales. In 2019, prior to the onset of COVID, no single quarter contributed more than 26% of Torrid net sales. We believe this is partly attributable to our broad merchandise offering that encourages purchasing across seasons. We believe our reduced seasonality is also attributable to the behavior of our customer, who is generally purchasing products for herself, not as gifts. We believe our limited sales seasonality provides structural cost advantages relative to peers, including reduced staffing cyclicality and seasonal distribution capacity needs. Further, our low seasonality means we do not need to increase marketing spend during the peak holiday season when advertising rates are highest. As we grow and our brand awareness continues to increase, we believe gift purchases may represent a driver of sales growth that could potentially lead to increased seasonality.

Competition

Although we have built the largest direct-to-consumer brand of women's plus-size apparel and intimates in North America, and are among the fastest growing direct-to-consumer brands in the plus-size apparel and intimates market, we face competition across a variety of players within the broader apparel industry. Our

competitors range from smaller, growing e-Commerce brands to considerably larger players with substantially greater financial, marketing and other resources. Further, we may face new competitors and increased competition from existing competitors as we expand into new markets and increase our presence in existing markets.

Our competition in the women's plus-size apparel industry includes:

- ***Plus-Size Focused Specialty Retailers.*** We also compete with other specialty retailers that, like Torrid, focus on plus-size customers. We believe we offer a significantly better experience primarily through our fit-first focus as well as broad and stylish product assortment that is further differentiated by our vertical sourcing capabilities. These brands have historically been focused on older consumers or have targeted specific ethnicities, while we target a younger, more stylish consumer with a wide assortment that has broad appeal. We further differentiate ourselves from these competitors based on the strength of our brand, industry-leading unified commerce business model and e-Commerce penetration, strong data capabilities, loyal customer base, customer-focused product assortment and highly experienced leadership team.
- ***Plus-Size Focused Direct to Consumer Brands.*** We also compete with a handful of smaller plus-size focused direct to consumer brands. They collectively have limited market share in the women's plus-size apparel industry. We differentiate ourselves by operating at a much larger scale, which allows us to offer a wider product assortment, better product quality and more convenience to provide a better experience and acquire customers more efficiently.
- ***Local, National and International Retail Chains.*** We compete indirectly with department stores, specialty apparel players and mass merchandise retailers who also carry products in our size range and offer similar categories of merchandise to our customer segment. These retailers typically carry women's plus-size apparel as a small percentage of their overall inventory and treat plus-size as an afterthought. They often relegate the plus-size customers to a less desirable section of the store and fail to design products that address her specific fit requirements. By maintaining a maniacal focus on fit, our proprietary product offering delivers a superior fit for the curvy woman that makes her love the way she looks and feels. Our sole focus on designing for our specific customer needs differentiate her experience when she shops with us.

We believe our competitors may have difficulty in replicating our product-oriented processes and brand equity as they lack our scale and insights into women's plus-size apparel. Our distinct combination of first at fit design, service, product quality and value allows us to compete effectively within the women's plus-size apparel market.

Intellectual Property

Our trademarks are important to our marketing efforts. We own or have the rights to use certain trademarks, service marks and trade names that are registered with the U.S. Patent and Trademark Office or other foreign trademark registration offices or exist under common law in the United States and other jurisdictions. Trademarks that are important in identifying and distinguishing our products and services include, but are not limited to Torrid® and Torrid Curve®. Our rights to some of these trademarks may be limited to select markets. We also own domain names, including our website, www.torrid.com. The information contained in or connected to our website is not deemed to be part of this prospectus. Further, we have patent applications pending for our innovative and most popular line of bras, the 360° Back Smoothing Bra, and for our Power Mesh Panels for Tummy-Flattening Pants.

Properties

We are headquartered in City of Industry, California. Our principal executive offices are leased under a lease agreement expiring in 2024, with options to renew thereafter. We do not own any real property.

As of May 1, 2021, we operated 608 stores in 50 U.S. states, Puerto Rico and Canada. Our stores are located primarily in premium malls, strip centers, lifestyle centers or outlet locations. They perform consistently across all formats because, we believe, our stores serve as a shopping destination for our customers and are therefore less dependent on broader traffic trends. The average size of our stores is approximately 3,000 square feet. All of our stores are leased from third parties and expect new leases to have initial terms of six years based on current discussions. A majority of our store leases, including all new leases signed since 2013 include performance-based early termination provisions or "kickout" clauses. These clauses provide us the contractual flexibility to exit a store or renegotiate rent in the event a store's performance deteriorates. Approximately 21% of current leases will have a termination or kickout within 3 years of the end of 2020, providing us with significant flexibility. The average remaining lease term was 4.5 years as of May 1, 2021 before the assumed benefit of kickout clauses. Assuming termination of each lease at the earlier of its first available kickout date or full term, the average remaining lease term was 2.1 years as of May 1, 2021. Substantially all of our store leases also include early termination provisions based on co-tenancy requirements for the shopping center. Given the positive performance trajectory of our stores, we have historically exercised these kick-out or co-tenancy termination provisions on a limited basis. In 2019, 46 leases were on variable rent structures which represented 8% of total lease. In 2020, we transitioned 87 leases to variable rent structures. As of May 1, 2021, 22% of our total leases were on variable rent structures, providing additional flexibility to our store fleet going forward. A number of our leases have built-in options to extend our tenancy for periods of up to five years.

Generally, store leases contain standard provisions concerning the payment of rent, events of default and the rights and obligations of each party. Rent due under the leases is generally comprised of annual base rent and sometimes includes a contingent rent payment based on the store's sales in excess of a specified threshold. The leases also generally require us to pay real estate taxes, insurance and certain common area costs. We renegotiate with landlords to obtain more favorable terms as opportunities arise.

The table below sets forth the number of Torrid stores by U.S. state or Canadian province that we operated as of May 1, 2021.

U.S. State	Number of Stores	U.S. State	Number of Stores	U.S. State	Number of Stores
AK	2	MD	11	PR	2
AL	6	ME	2	RI	2
AR	6	MI	20	SC	6
AZ	14	MN	13	SD	2
CA	57	MO	11	TN	15
CO	12	MS	5	TX	55
CT	6	MT	2	UT	7
DE	2	NC	14	VA	14
FL	34	ND	3	VT	1
GA	19	NE	3	WA	16
HI	3	NH	6	WI	13
IA	8	NJ	16	WV	5
ID	3	NM	5	WY	1
IL	24	NV	7		
IN	18	NY	21	**Canada**	
KS	4	OH	28	CAN-AB	4
KY	9	OK	7	CAN-BC	2
LA	9	OR	8	CAN-MB	1
MA	10	PA	20	CAN-ON	14

Legal Proceedings

From time to time, we are subject to certain legal proceedings and claims in the ordinary course of business. We are not presently party to any legal proceedings the resolution of which we believe would have a material adverse effect on our business, financial condition, operating results or cash flows. We establish reserves for specific legal matters when we determine that the likelihood of an unfavorable outcome is probable and the loss is reasonably estimable.

Regulation and Legislation

We are subject to labor and employment, tax, environmental, privacy and anti-bribery laws. We are also subject to regulations, trade laws and customs, truth-in-advertising, consumer protection and zoning and occupancy laws and ordinances that regulate retailers generally and/or govern the importation, promotion and sale of merchandise and the operation of stores and warehouse facilities. We monitor changes in these laws and believe that we are in material compliance with applicable laws.

A substantial portion of our products are manufactured outside the United States. These products are imported and are subject to U.S. customs laws, which impose tariffs as well as import quota restrictions for textiles and apparel. Some of our imported products are eligible for duty-advantaged programs. While importation of goods from foreign countries from which we buy our products may be subject to embargo by U.S. customs authorities if shipments exceed quota limits, we closely monitor import quotas and believe we have the sourcing network to efficiently shift production to factories located in countries with available quotas. The existence of import quotas has, therefore, not had a material adverse effect on our business. For more information, see "Risk Factors—Risks Related to Our Business—Changes in laws, including employment laws and laws related to our merchandise, could make conducting our business more expensive or otherwise change the way we do business."

Data Privacy and Security

We collect, process, store, use, and share data, some of which contains personal information. Consequently, our business is subject to a number of U.S. and international laws, regulations, and industry standards governing data privacy and security, including with respect to the collection, storage, use, transmission, sharing, and protection of personal information and other consumer data. Such laws and regulations may be inconsistent among countries or conflict with other rules.

For example, the European Union ("EU"), has adopted strict data privacy and security regulations. The General Data Protection Regulation ("GDPR"), effective May 2018, created new compliance obligations applicable to even non-EU businesses without an establishment in the EU or in the European Economic Area ("EEA") that offer their goods or services to individuals located in the EU/EEA or observe the behavior of individuals located in the EU/EEA. Companies that fail to comply with their GDPR obligations can face material consequences including large financial penalties (including fines of up to 4% of global annual revenue of the group of undertakings for the preceding financial year or €20 million (whichever is higher) for the most serious violations), investigations, civil actions including claims for damages and cease-and-desist claims and reputational damages.

In addition, rulings from the Court of Justice of the European Union ("CJEU") may have a great impact on how companies subject to the GDPR process EU personal data. For instance, on July 16, 2020, the CJEU invalidated the EU-U.S. Privacy Shield Framework (the "Privacy Shield") under which personal data could be transferred from the EEA to U.S. entities who had self-certified under the Privacy Shield scheme. While the CJEU upheld the adequacy of the standard contractual clauses (a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism and potential alternative to the Privacy Shield), it made clear that reliance on such clauses alone may not necessarily be sufficient in all circumstances.

In addition, the scope of data privacy regulations worldwide continues to evolve. New, increasingly restrictive regulations are coming into force all around the world. For example, in the United States, the California Consumer Privacy Act, or CCPA, went into effect on January 1, 2020 and became enforceable by the California Attorney General on July 1, 2020, along with related regulations that came into force on August 14, 2020. In short, the CCPA: (1) provides California consumers with new rights to access and require deletion of their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is collected, used, and shared; (2) will affect several marketing activities due to the CCPA's broad definitions of personal information and sale, and (3) provides for private actions and permits for class action which could result in businesses being subject to substantial statutory fines in cases involving thousands of impacted consumers where the business is found to have failed to implement and maintain reasonable and appropriate security procedures.

Given that CCPA enforcement began on July 1, 2020, it remains unclear what, if any, modifications will be made to this legislation or how it will be interpreted. However, it is clear that the effects of the CCPA are significant and that they will require us to modify our data, security, and marketing practices and policies, and to incur substantial costs and expenses in an effort to comply with the CCPA and other applicable data protection laws. Further, a new California ballot initiative, the California Privacy Rights Act, or CPRA, recently passed in California. The CPRA will amend the CCPA by creating additional privacy rights for California consumers and additional obligations on businesses, which could subject us to additional compliance costs as well as potential fines, individual claims and commercial liabilities.

Additionally, our compliance with our privacy policy and our general consumer data privacy and security practices are also subject to review by the Federal Trade Commission, which may bring enforcement actions to challenge allegedly unfair and deceptive trade practices, including the violation of privacy policies and representations or material omissions therein.

Our marketing activities in the EU/EEA are subject to the Directive on privacy and electronic communications ("ePrivacy Directive") and national implementation laws, which impose stringent rules and restrictions on electronic marketing such as consent (opt-in) requirements for certain types of direct marketing and the use of cookies and comparable tracking technologies on websites. These legal frameworks are continuously evolving and being interpreted by courts and regulators. Moreover, there currently are a number of other proposals related to data privacy and security pending before several legislative and regulatory bodies. For example, the European Union is contemplating the adoption of the Regulation on Privacy and Electronic Communications (the "e-Privacy Regulation"). While this regulation was planned to take effect simultaneously with GDPR, it is currently still being debated and discussed by the EU member states. The current draft of the e-Privacy Regulation imposes strict opt-in e-marketing rules with limited exceptions to business to business communications and significantly increases fining powers to the same levels as GDPR. Regulation of cookies and comparable tracking technologies may lead to broader restrictions on our online activities, including efforts to understand followers' internet usage and promote ourselves to them.

MANAGEMENT

Below is a list of the names and ages as of June 23, 2021 of our directors and executive officers and a brief account of the business experience of each of them.

Name	Age	Position
Elizabeth Muñoz	53	Chief Executive Officer and Director
George Wehlitz	60	Chief Financial Officer
Michael Salmon	55	Chief Operating Officer
Anne Stephenson	51	Chief Merchandising and Product Officer
Lisa Harper	62	Director
Stefan L. Kaluzny	55	Director
Dary Kopelioff	37	Director
Theo Killion	70	Director

Executive Officers

Elizabeth Muñoz has served as our Chief Executive Officer since August 2018. Ms. Muñoz has served as Torrid's President since January 2018, and previously as Torrid's Senior Vice President of Product from June 2010 through January 2018. Ms. Muñoz served as the President of Lucky Brand from 2007 to January 2010 and Senior Vice President of Design and Merchandising Lucky Brand from 1997 to January 2007. From 1987 to 1997, Ms. Muñoz held various design related positions with Bongo Jeans, including Head of Design and Merchandising. Ms. Muñoz graduated from the Fashion Institute of Design & Merchandising.

George Wehlitz, Jr. has served as our Chief Financial Officer since January 2021. Mr. Wehlitz's oversight of the Torrid finance operations extends back to January 2013, when he became Chief Financial Officer of our legacy parent company Hot Topic. Mr. Wehlitz also previously served as our Chief Financial Officer between October 2016 and January 2018. From January 2018 to January 2021, Mr. Wehlitz was Chief Financial Officer at Hot Topic. Mr. Wehlitz joined Hot Topic in April 2008 as Vice President, Finance. From November 2005 to January 2008, Mr. Wehlitz was Chief Financial Officer at Cycle Gear, Inc., a specialty retailer of motorcycle apparel and accessories. Mr. Wehlitz previously served Hot Topic as Vice President, Controller from February 2002 to August 2003, and then served as Vice President, Finance from August 2003 to November 2005. From August 2000 to February 2002, Mr. Wehlitz was Chief Financial Officer at The Popcorn Factory, a catalog company for gourmet popcorn gifts. From 1987 to 2000, Mr. Wehlitz held various financial-related positions, at the divisional and corporate level, including Corporate Controller, Treasurer and President of Bombay Canada, for The Bombay Company, Inc. Mr. Wehlitz holds a B.A. degree from Texas Christian University and is a Certified Public Accountant (inactive).

Michael Salmon has served as our Chief Operating Officer since December 2018. Mr. Salmon was previously Torrid's Senior Vice President of Planning and Allocation since June 2018. Mr. Salmon served as Consultant with Elm Street Advisors from November 2017 to June 2018. Mr. Salmon served as Executive Vice President, Divisional Chief Operating Officer of the J. Crew and Factory Brand division of J. Crew Inc. from June 2015 to November 2017. Mr. Salmon held multiple roles within the Madewell division of J. Crew Inc. from July 2009 to June 2015 including SVP Planning, Allocation & Stores and then Divisional Chief Operating Officer from April 2014 to June 2015. From 2004 to 2009, Mr. Salmon held various merchandise planning and allocation roles with the Factory division of J. Crew Inc. Mr. Salmon served as the Director of Merchandise and Company Planning at The Children's Place from November 2003 to October 2004. From 1994 to 2003, Mr. Salmon held various merchandise planning and allocation roles at Gap, Inc. Mr. Salmon attended Drexel University.

Anne Stephenson has served as our Chief Merchandising and Product Officer since August 2019. Ms. Stephenson served as the Senior Vice President, Brand Manager of Roaman's/Ellos of Full Beauty Brands, Inc. from December 2017 to February 2019. Ms. Stephenson served in various roles with Victoria's Secret from March 2001 to November 2017 including Vice President of Merchandising, Executive Vice President of Merchandising and Executive Vice President of Design. Ms. Stephenson served as a Senior Merchant at Saks Fifth Avenue from September 1994 to March 2001. Ms. Stephenson also held Store Manager roles with Armani Exchange and The Limited early in her career. Ms. Stephenson graduated from Columbia University, Barnard College.

Non-Employee Directors

Stefan L. Kaluzny has served as a member of our board of directors since 2019. Mr. Kaluzny is co-founder and Managing Director of Sycamore Partners, a New York based private equity firm. Prior to founding Sycamore Partners, Mr. Kaluzny was a Managing Director of Golden Gate Capital. Mr. Kaluzny was with Golden Gate Capital since its inception in 2000 until January 2011. Prior to Golden Gate Capital, Mr. Kaluzny was co-founder and CEO of Delray Farms, a Hispanic specialty food company. Mr. Kaluzny has also held positions at consulting firms Bain & Company and LEK. Mr. Kaluzny has an M.B.A. from Harvard Business School (Baker Scholar), and a B.A. degree from Yale University. Mr. Kaluzny currently serves as a member of the Board of Trustees of Phillips Academy, a residential boarding school located in Andover, MA, and previously served on the Yale University Investment Committee. In addition to his service on our board of directors, Mr. Kaluzny currently serves and has served as member of the board of directors of many of Sycamore Partners' portfolio companies. As a result of these and other professional experiences, Mr. Kaluzny possesses particular knowledge and experience in retail merchandising, accounting, finance and capital structure, strategic planning and leadership of complex organizations, and board practices of other major corporations that strengthen the board's collective qualifications, skills and experience.

Dary Kopelioff has served as a member of our board of directors since 2019. Mr. Kopelioff is a Managing Director of Sycamore Partners, a New York based private equity firm. Prior to Sycamore Partners, Mr. Kopelioff was an Associate at Golden Gate Capital and had been with the firm since 2007. Prior to Golden Gate Capital, Mr. Kopelioff was a consultant for McKinsey & Company. Mr. Kopelioff has an M.B.A. from Harvard Business School and a B.S. degree with distinction from Stanford University. In addition to his service on our board of directors, Mr. Kopelioff currently serves as a member of the board of directors of Hot Topic, LOFT / Ann Taylor and Lane Bryant. As a result of these and other professional experiences, Mr. Kopelioff possesses particular knowledge and experience in retail merchandising, accounting, finance and capital structure, strategic planning, and leadership of complex organizations, and board practices of other major corporations that strengthen the board's collective qualifications, skills and experience.

Lisa Harper has served as a member of our board of directors since 2019. Ms. Harper currently serves as Chief Executive Officer of Belk, a privately-owned department store chain. In February 2021, under Ms. Harper's leadership, Belk successfully completed its financial restructuring, finalizing an expedited pre-packaged, one-day reorganization, and emerged from Chapter 11 Bankruptcy. Ms. Harper previously served as CEO of each of Torrid Holding Corp. and its predecessor, Hot Topic, from March 2011 until June 2016. From February 2001 until her retirement in July 2006, Ms. Harper served in various capacities with The Gymboree Corporation, a publicly-traded corporation operating a chain of specialty retail stores for children and women. Ms. Harper's roles at Gymboree included Chairman of the board of directors, from June 2002 to July 2006, Chief Creative Officer, from January 2006 to July 2006, Vice Chairman of the board of directors, from February 2001 to June 2002, and Chief Executive Officer, from February 2001 to January 2006. Ms. Harper has also held merchandising and design positions with several other clothing retailers, including Limited Too, Esprit, GapKids, Mervyn's and Levi Strauss. Ms. Harper attended the University of North Carolina at Chapel Hill. In addition to her service on our board of directors, Ms. Harper currently serves as a member of the board of directors of each of Belk and Hot Topic. As a result of these and other professional experiences, Ms. Harper possesses particular knowledge and experience in multi-channel retail merchandising, strategic planning and leadership of complex organizations, and board practices of other major corporations that strengthen the board's collective qualifications, skills and experience.

Theo Killion has served as a member of our board of directors since June 2021. Since November 2016, Mr. Killion has been a managing partner of The Sierra Institute, a Dallas based human resources consortium. Mr. Killion also worked for The Zale Corporation from January 2008 until July 2014, serving as Chief Executive Officer from January 2010 until his retirement in 2014. Prior to Zale, Mr. Killion served in a variety of positions at a number of iconic retailers including Tommy Hilfiger, Limited Brands (now L Brands), The Home Shopping Network and Macy's. Mr. Killion holds M. Ed. and B.A. degrees from Tufts University. In addition to his service on our board of directors, Mr. Killion currently serves as a member of the board of directors of Claire's Stores, Inc., a privately-held global retailer of fashionable jewelry accessories, where he serves as a member of the Audit Committee and Chairman of the Compensation Committee. Mr. Killion previously served as a member of the board of directors of Tailored Brands, Inc., Libbey, Inc., Express, Inc. and The Zale Corporation when he was CEO. Mr. Killion is also a member of the National Association of Corporate Directors. As a result of these and other professional experiences, Mr. Killion possesses particular knowledge and experience in retail merchandising, human capital management, executive compensation, DE&I, ESG, and board governance practices of other major corporations that strengthen the board's collective qualifications, skills and experience.

There are no family relationships between any of our executive officers or directors.

Corporate Governance

Board Composition; Director Independence; Controlled Company Exemption

Upon consummation of this offering, our board of directors will consist of five individuals, including one as chairman, and one vacancy.

Our certificate of incorporation, which will be in effect prior to the completion of this offering, will provide that our board of directors shall consist of such number of directors as determined from time to time by resolution adopted by a majority of the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding, from and after the Trigger Event any additional directorships resulting from an increase in the number of directors may only be filled by the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders). The term of office for each director will be until his or her successor is elected at our annual meeting or his or her death, resignation or removal, whichever is earliest to occur. Stockholders will elect directors each year at our annual meeting.

Our board of directors will be divided into three classes, with each director serving a three-year term, and one class being elected at each year's annual meeting of stockholders. Stefan L. Kaluzny and Lisa Harper will serve as Class I directors with an initial term expiring at the first annual meeting of stockholders following this offering. Elizabeth Muñoz and Theo Killion will serve as Class II directors with an initial term expiring at the second annual meeting of stockholders following this offering. Dary Kopelioff will serve as a Class III director while the other Class III seat will be vacant, in each case, with an initial term expiring at the third annual meeting of stockholders following this offering.

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the total number of directors. Our board of directors has affirmatively determined Theo Killion will be an "independent director," as defined under the rules of the NYSE.

Upon completion of this offering, Sycamore will continue to control a majority of the voting power of our outstanding common stock. As a result, we will be a "controlled company" under the NYSE corporate

governance standards. As a controlled company, exemptions under the standards will free us from the obligation to comply with certain corporate governance requirements, including the requirements:

- that a majority of our board of directors consists of "independent directors," as defined under the rules of the NYSE;
- that any corporate governance and nominating committee or compensation committee be composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- for an annual performance evaluation of the nominating and governance committees and compensation committee.

These exemptions do not modify the independence requirements for our Audit Committee, and we intend to comply with the requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules of the NYSE within the applicable time frame.

Pursuant to the Stockholders' Agreement we will enter into with Sycamore Partners Torrid, L.L.C. (together with its indirect beneficial owners, the "Sycamore Stockholder") in connection with this offering, (x) when the Sycamore Stockholder beneficially owns at least 50% of our common stock, the Sycamore Stockholder will be entitled to designate for nomination a majority of the directors, (y) when the Sycamore Stockholder beneficially owns less than 50% of our common stock but owns at least 10% of our common stock, the Sycamore Stockholder will be entitled to designate for nomination a number of directors in proportion to its ownership of our common stock, rounded up to the nearest whole number and (z) when the Sycamore Stockholder owns less than 10% of our common stock but owns at least 5% of our common stock, the Sycamore Stockholder will be entitled to designate for nomination the greater of (i) a number of directors in proportion to its ownership of our common stock, rounded up to the nearest whole number, and (ii) one director. See "Certain Relationships and Related Party Transactions—Stockholders' Agreement."

Board Leadership Structure

Upon completion of this offering, our board of directors will have three standing committees—Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee—each with a director serving as committee chair. Each of these committees reports to our board of directors as they deem appropriate, and as the board may request.

With respect to the roles of Chairman of the Board and Chief Executive Officer, our Corporate Governance Guidelines provide that the roles may be separated or combined, and the board exercises its discretion in combining or separating these positions as it deems appropriate in light of prevailing circumstances. Our board of directors believes that the combination or separation of these positions should continue to be considered as part of the succession planning process. Our Corporate Governance Guidelines provide the flexibility for our board of directors to modify our leadership structure in the future as appropriate. We believe that Torrid, like many U.S. companies, is well-served by this flexible leadership structure.

Board Committees

Prior to the completion of this offering, our board of directors will establish a new Audit Committee, a new Compensation Committee and a new Nominating and Corporate Governance Committee. The composition, duties and responsibilities of these committees is as set forth below. In the future, our board of directors may establish other committees, as it deems appropriate, to assist it with its responsibilities.

Audit Committee

The Audit Committee will be responsible for, among other matters: (1) appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm; (2) discussing with our independent registered public accounting firm their independence from management; (3) reviewing with our

independent registered public accounting firm the scope and results of their audit; (4) approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm; (5) overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC; (6) reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; (7) establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters; and (8) reviewing and approving related person transactions.

Upon completion of this offering, our Audit Committee will consist of Theo Killion, Lisa Harper and Dary Kopelioff, with Theo Killion serving as chairman. Rule 10A-3 of the Exchange Act and the NYSE rules require us to have one independent Audit Committee member upon the listing of our common stock on the NYSE, a majority of independent directors within 90 days of the date of this prospectus and all independent Audit Committee members within one year of the date of this prospectus. Our board of directors has affirmatively determined that Theo Killion meets the definition of "independent director" for purposes of serving on an Audit Committee under Rule 10A-3 and the NYSE rules, and we intend to comply with the other independence requirements within the time periods specified. In addition, our board of directors has determined that Theo Killion will qualify as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K. Our board of directors will adopt a new written charter for the Audit Committee, which will be available on our corporate website at www.torrid.com after the completion of this offering. The information contained in or connected to our website is not deemed to be part of this prospectus.

Compensation Committee

The Compensation Committee will be responsible for, among other matters: (1) reviewing officer and executive compensation goals, objectives and plans; (2) reviewing and recommending to our board of directors, the compensation and benefits of our directors, Chief Executive Officer and other executive officers; (3) reviewing and approving employment agreements and other similar arrangements between us and our officers and other key executives; and (4) appointing and overseeing any compensation consultants.

Upon completion of this offering, our Compensation Committee will consist of Stefan L. Kaluzny, Theo Killion and Dary Kopelioff, with Stefan L. Kaluzny serving as chairman. The composition of our Compensation Committee will meet the requirements for independence under current rules and regulations of the SEC and NYSE, including NYSE's controlled company exemption.

Our board of directors will adopt a new written charter for the Compensation Committee, which will be available on our corporate website at www.torrid.com after the completion of this offering. The information contained in or connected to our website is not deemed to be part of this prospectus.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee will be responsible for, among other matters: (1) identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors; (2) reviewing shareholder proposals and overseeing engagement with shareholders and proxy advisory firms; (3) reviewing the Board's leadership structure and recommending changes to the Board as appropriate; and (4) reviewing and proposing changes to the Company's corporate governance policies.

Upon completion of this offering, our Nominating and Corporate Governance Committee will consist of Dary Kopelioff, Lisa Harper and Stefan L. Kaluzny, with Dary Kopelioff serving as chairman. The composition of our Nominating and Corporate Governance Committee will meet the requirements for independence under current rules and regulations of the SEC and NYSE, including NYSE's controlled company exemption.

Our board of directors will adopt a new written charter for the Nominating and Corporate Governance Committee, which will be available on our corporate website at www.torrid.com after the completion of this offering. The information contained in or connected to our website is not deemed to be part of this prospectus.

Risk Oversight

Our board of directors is responsible for overseeing our risk management process. The board focuses on our general risk management strategy, the most significant risks facing Torrid, and ensures that appropriate risk mitigation strategies are implemented by management. The board is also apprised of particular risk management matters in connection with its general oversight and approval of corporate matters and significant transactions.

The board has delegated to the Audit Committee oversight of our risk management process. Our other board committees also consider and address risk as they perform their respective committee responsibilities. All committees report to the full board as appropriate, including when a matter rises to the level of a material or enterprise level risk. Our management is responsible for day-to-day risk management.

Our internal audit function serves as the primary monitoring and testing function for company-wide policies and procedures, and manages the day-to-day oversight of the risk management strategy for the ongoing business of Torrid. This oversight includes identifying, evaluating, and addressing potential risks that may exist at the enterprise, strategic, financial, operational, and compliance and reporting levels.

Compensation Committee Interlocks and Insider Participation

No interlocking relationships exist between the members of our board of directors or compensation committee and our board of directors or compensation committee of any other company.

Code of Ethics

We will adopt a code of business conduct and ethics applicable to our principal executive, financial and accounting officers and all persons performing similar functions. A copy of that code will be available on our corporate website at www.torrid.com after completion of this offering. We expect that any amendments to the code, or any waivers of its requirements, will be disclosed on our website. The information contained in or connected to our website is not deemed to be part of this prospectus.

Director Compensation

During 2020, Lisa Harper and Lawrence Molloy were paid $100,000 and $99,000, respectively, in fees in cash for services on our board of directors. During 2020, none of our directors (other than Lisa Harper and Lawrence Molloy) has received any cash, equity or other compensation for services rendered to us. All directors receive reimbursement for reasonable out-of-pocket expenses incurred in connection with meetings of the board. Following the IPO, Lisa Harper and non-employee directors who are not affiliated with Sycamore will be paid an annual retainer of $100,000. An additional $15,000 will be paid to non-employee directors who are not affiliated with Sycamore for serving as the chairman of a committee. Finally, non-employee directors who are not affiliated with Sycamore will receive, upon the completion of this offering, restricted stock units equal to $125,000 divided by the closing stock price of our common stock as reported on the NYSE on the date of grant, that vest on the first anniversary of the date of grant.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table sets forth total compensation of our named executive officers ("NEOs") for 2020, which concluded on January 30, 2021. Our NEOs for 2020 are Elizabeth Muñoz, Marc Katz, Michael Salmon and Anne Stephenson.

Name and Principal Position	Year	Salary ($)	Non-Equity Incentive Plan Compensation ($)(1)	All Other Compensation ($)	Total ($)
Elizabeth Muñoz, Chief Executive Officer	2020	908,654	1,125,000	39,709(2)	2,073,363
Marc Katz, Former President & Chief Financial Officer	2020	748,402	—	1,563,016(3)	2,311,418
Michael Salmon, Chief Operating Officer	2020	549,999	357,500	28,843(4)	936,342
Anne Stephenson, Chief Merchandising and Product Officer	2020	599,999	390,000	25,261(5)	1,051,260

(1) The amounts reported in the "Non-Equity Incentive Plan Compensation" column represent annual cash incentive awards earned by our NEOs during 2020, which were paid in March 2021, as further described below under "—Non-Equity Incentive Plan Compensation."

(2) Amounts consist of the following other sources of compensation: $11,239 in Company matching contributions pursuant to the Company's non-qualified deferred compensation plan; $2 paid by the Company for general life insurance premiums; $24,623 paid by the Company for annual policy premiums related to medical insurance; and $3,845 paid by the Company for supplemental disability income insurance premiums.

(3) Amounts consist of the following other sources of compensation: $800,000 in regular severance payments payable to Mr. Katz in connection with his termination of employment, which was effective on December 18, 2020 (including $92,308 in severance payments actually paid to Mr. Katz in 2020), as well as a payment of $705,495 with respect to Mr. Katz's pro-rata annual bonus for 2020, as further described below under "—Employment Agreements With Our Named Executive Officers"; $30,036 in expense reimbursements paid to Marc Katz by the Company in connection with relocation of his primary residence to California in order to work for the Company at its headquarters; $2 paid by the Company for general life insurance premiums; $24,015 paid by the Company for annual policy premiums related to medical insurance; and $3,468 paid by the Company for supplemental disability income insurance premiums.

(4) Amounts consist of the following other sources of compensation: $846 in Company matching contributions pursuant to the Company's 401(k) plan; $2 paid by the Company for general life insurance premiums; $24,623 paid by the Company for annual policy premiums related to medical insurance; and $3,372 paid by the Company for supplemental disability income insurance premiums.

(5) Amounts consist of the following other sources of compensation: $2,908 in Company matching contributions pursuant to the Company's 401(k) plan; $2 paid by the Company for general life insurance premiums; $18,761 paid by the Company for annual policy premiums related to medical insurance; and $3,590 paid by the Company for supplemental disability income insurance premiums.

Non-Equity Incentive Plan Compensation

Non-Equity Incentive Plan

Our NEOs are eligible to participate in an annual cash incentive plan (the "Annual Incentive Plan") which provides them an opportunity to earn an annual cash incentive award ("Annual Incentive") based on the attainment of certain pre-determined Adjusted EBITDA goals, as adjusted for certain non-recurring events and expenses. Payments made to participants in our Annual Incentive Plan, including our NEOs, are made in the first quarter of the fiscal year following the conclusion of the fiscal year performance period. The Adjusted EBITDA goals are established by our board of directors prior to, or shortly after, the start of the applicable fiscal year in conjunction with approval of our fiscal year budget and range from a minimum (or threshold) level to a maximum level, with a target level in between. Under the Annual Incentive Plan, as of the end of 2020, each NEO has a targeted incentive award potential expressed as a percentage of his or her annual base salary as set forth in the following chart, with a threshold incentive award potential equal to 40% of such NEO's target incentive award and a maximum incentive award potential equal to 200% of such NEO's target annual incentive. If threshold performance goals are not met, a NEO is not entitled to receive any Annual Incentive under the Annual Incentive Plan. Notwithstanding such targets, our board of directors has discretion to increase or reduce the size of any award if it believes the interests of our stockholders would be better served by doing so.

Name	Target Bonus %
Elizabeth Muñoz	125
Marc Katz	94(1)
Michael Salmon	65
Anne Stephenson	65

(1) Due to Mr. Katz's termination of employment, and in accordance with the terms of his employment agreement (as further described below under "—Employment Agreements With Our Named Executive Officers"), Mr. Katz's target bonus percentage represents a pro-rata portion of his annual bonus opportunity for 2020 based on the effective date of his termination of employment on December 18, 2020.

We did not establish a target Adjusted EBITDA goal for the full 2020 due to the significant disruption to our business as a result of COVID-19. Rather, we established a target Adjusted EBITDA goal of approximately $35.0 million for the six-month period ended January 30, 2021, for purposes of the Annual Incentive Plan. After adjustment for certain non-recurring events and expenses in accordance with the terms of the Annual Incentive Plan, Torrid's Adjusted EBITDA for 2020 resulted in a payout equal to 100% of each NEO's target annual incentive award under the Annual Incentive Plan. Our board of directors did not exercise any discretion to increase or reduce the size of any annual incentive award for 2020 under the Annual Incentive Plan.

Nonqualified Deferred Compensation

In addition to the standard benefits offered all employees, our NEOs and other senior managers are eligible to participate in our non-qualified deferred compensation plan. The plan allows participating executives to defer base salary and annual incentive income. During our 2020, to the extent a participant was ineligible to receive such contribution from participation in our 401(k) Plan, we contributed 50% of the first 4% of each participant's eligible contributions into his or her deferred compensation plan account, including the accounts held by our NEOs. The plan also permits us to grant discretionary contributions. From March 2020 to July 2020, we suspended our contributions to eligible employees' accounts, including the accounts held by our NEOs, as a precautionary measure in light of uncertainty resulting from COVID-19.

Plan participants are always vested in their deferred salary and annual incentive amounts, and any matching contributions fully vest after three years of service. Distributions of deferred amounts are made either in installments or in a lump sum according to the election made by a participant at the time of the deferral. Earnings on the account of each participant are credited to such participant based on the performance of investment

vehicles chosen by the participant from a selection offered to all plan participants and which are comprised of investment vehicles generally available to the public. Participants may elect to change the investment vehicles applicable to their accounts at any time.

Perquisites & Benefits

Each of our NEOs received certain perquisites and benefits during 2020, generally at the same level and offering made available to other employees, including our 401(k) Plan, health care plans, life insurance plans and other welfare benefit programs. All of our NEOs also received company-paid medical and disability insurance coverage.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth certain information regarding outstanding equity awards of our NEOs as of January 30, 2021. The market value of the shares in the following table is the fair market value of such shares as of January 30, 2021.

		Stock Awards	
Name	Grant Date	Number of Shares that Have Not Vested[1]	Market Value of Shares of Stock that Have Not Vested[2]
Elizabeth Muñoz			
Class E Units	August 29, 2018	275,000	$ 583,303
Class F Units		275,000	$ 385,605
Marc Katz[3]			
Class E Units	—	—	$ —
Class F Units	—	—	$ —
Michael Salmon			
Class E Units	July 9, 2018;	195,000	$ 413,615
Class F Units	December 23, 2019	195,000	$ 273,429
Anne Stephenson			
Class E Units	September 21, 2019;	232,500	$ 493,156
Class F Units	January 22, 2020	232,500	$ 326,012

(1) The Incentive Units granted to our NEOs generally vest based on continued service by our NEOs as follows: 20% vest on either the first anniversary or approximately one month prior to the first anniversary of the grant date and 5% vest every three months thereafter until the Incentive Units are 100% vested.

(2) Because there was no public market for our equity as of January 30, 2021, the market value of our Class E and Class F Units as of that date was determined by an independent valuation of our equity using a Black-Scholes option valuation model. The fair value methodology we used to value our Class E and Class F Units incorporates various assumptions, including the time to a liquidity event, equity volatility and risk-free interest rate of return. Equity volatility is based on the historical volatilities of comparable publicly traded companies for a time horizon equal to the time to the anticipated liquidity event, which is 0.46 years; and the risk-free interest rate of 0.07% is for a term corresponding to the time to liquidity event. Accordingly, we determined that the market value of our Class E Units was $2.1211 per unit and the market value of our Class F Units was $1.4022 per unit.

(3) As a result of Mr. Katz' termination of employment on December 18, 2020, his Incentive Units, all of which were unvested as of his termination of employment, were repurchased at such time for no consideration.

Long-Term Incentive Awards

Profits Interests

Certain of our NEOs have been granted Class E Units and Class F Units (together, the "Incentive Units") in Torrid Holding LLC, which are intended to constitute "profits interests." Under the Torrid Holding LLC Agreement, holders of Torrid Holding LLC's units are entitled to distributions at such times and in such amounts as determined by our board of directors, with a first priority return of accumulated and unpaid yield and a fixed dollar return paid to the holders of Class L Units, and thereafter, pro rata sharing among the holders of various classes of Torrid Holding LLC's vested units on a pro rata basis (including the vested Incentive Units), with each additional class of vested units participating upon the achievement of various hurdle rates set forth in the Torrid Holding LLC Agreement.

Vesting of Incentive Units

The Incentive Units granted to our NEOs generally vest based on continued service by our NEOs as follows: for Ms. Muñoz and certain Incentive Units granted to Mr. Salmon, 20% vest on the first anniversary of the grant date, and for Ms. Stephenson and certain Incentive Units granted to Mr. Salmon, 20% vest approximately one month prior to the first anniversary of the grant date, and for all of our NEOs, 5% vest every three months thereafter until the Incentive Units are 100% vested. As of May 1, 2021, 250,000 Class E Units and 250,000 Class F Units granted to Ms. Muñoz were vested, 120,000 Class E Units and 120,000 Class F Units granted to Mr. Salmon were vested and 82,500 Class E Units and 82,500 Class F Units granted to Ms. Stephenson were vested. Certain of our NEOs also hold other fully-vested equity interests in Torrid LLC, as further reflected in the table set forth in "Principal and Selling Stockholders" of this prospectus.

Generally, if a NEO ceases to be employed by us or one of our subsidiaries or affiliates for any reason on or prior to the fifth anniversary of the grant date, all unvested Incentive Units will be forfeited, and all vested Incentive Units are subject to repurchase. Upon a termination of a NEO's employment due to Cause (as defined below) or if the NEO provides any services to any of our competitors during the term of their employment or during the 90-day period following their termination of employment all Incentive Units may be repurchased at no cost. During the 90-day period following the NEO's termination of employment for any other reason (including due to the NEO's death or disability) on or prior to the fifth anniversary of the grant date, we may repurchase any outstanding vested Incentive Units at the then-current fair market value. These Incentive Unit repurchase rights will expire on the date of an initial public offering of Torrid Holdings Inc.

For purposes of the Incentive Unit grant agreements with our NEOs, "Change of Control" means the first to occur of any (i) sale or transfer to any third party of the Company's Units by the holders thereof as a result of which any person or group other than the members of the Sycamore Group (as defined in the grant agreement) obtains possession of voting power (under ordinary circumstances) to elect a majority of our board of directors, (ii) sale or transfer by the Company or its subsidiaries of all or substantially all (as defined under Delaware law) of their assets on a consolidated basis to a person or group other than the members of the Sycamore Group, or (iii) consolidation, merger or reorganization of the Company with or into any other entity or entities as a result of which any person or group other than the members of the Sycamore Group obtains possession of voting power (under ordinary circumstances) to elect a majority of the surviving entity's board of directors or managers (or equivalent governing body).

For purposes of the Incentive Unit grant agreements with our NEOs, "Cause" has the meaning ascribed to the term in any written employment agreement between the Company and the NEO, or in the absence of an agreement, means (i) the commission of a felony or any other act or omission involving dishonesty, disloyalty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or any other crime involving moral turpitude, (ii) conduct tending to bring the Company or any of its subsidiaries into public disgrace or disrepute or economic harm, (iii) repeated failure or inability to perform duties and/or obligations for

the Company or its subsidiaries as reasonably directed by such NEO's manager, supervisor or their designees, (iv) gross negligence or willful misconduct with respect to the Company or any of its subsidiaries, (v) prior to the NEO's cessation or termination of employment with the Company and/or any subsidiary of the Company, as the case may be, or during the ninety day period immediately thereafter, such NEO, directly or indirectly, for himself or herself or for any other person, having an ownership interest in any enterprise or participating in the management of such enterprise (whether as an officer, director, employee, partner, sole proprietor, agent, representative, independent contractor, consultant, executive, creditor, owner or otherwise) conducting business in the United States of America in competition with the principal businesses carried on by the Company and its subsidiaries, or (vi) any other material breach of any written agreement between such NEO, on the one hand, and the Company and/or any subsidiary of the Company, on the other hand.

In connection with the completion of our IPO, the unvested portion of the Incentive Units held by our NEOs and other executives will be converted to restricted stock awards granted pursuant to our LTIP (as described below). Such restricted stock awards will vest in accordance with the underlying vesting schedules applicable to the corresponding cancelled Incentive Units.

Long-Term Incentive Plan

In order to incentivize our employees following the completion of our IPO, our board of directors adopted a long-term incentive plan (the "LTIP"), for employees, consultants and directors prior to the completion of our IPO. Our Named Executive Officers are eligible to participate in the LTIP, which will become effective upon the consummation of our IPO. The LTIP provides for the grant of options, stock appreciation rights, restricted stock, restricted stock units, stock awards, dividend equivalents, other stock-based awards, cash awards and substitute awards intended to align the interests of service providers, including our Named Executive Officers, with those of our shareholders.

Subject to adjustment in the event of certain transactions or changes of capitalization in accordance with the LTIP, a total of 7% of the shares of common stock outstanding at the closing of our IPO (on a fully diluted basis) were initially reserved for issuance pursuant to awards under the LTIP.

Employee Stock Purchase Plan

Our board of directors adopted an employee stock purchase plan intended to qualify under Section 423 of the Code (the "ESPP") prior to the completion of our IPO in order to provide all of our eligible employees with a further incentive towards ensuring our success and accomplishing our corporate goals.

Subject to adjustment in the event of certain transactions or changes of capitalization in accordance with the LTIP, a total of 3% of the shares of common stock outstanding at the closing of our IPO (on a fully diluted basis) were initially reserved for issuance pursuant to awards under the ESPP.

Employment Agreements With Our Named Executive Officers

Elizabeth Muñoz Employment Agreement

On December 13, 2019, we entered into an employment agreement with Elizabeth Muñoz governing her services as our Chief Executive Officer. Ms. Muñoz's employment agreement provides for base salary, eligibility to participate in the Annual Incentive Plan, eligibility to receive long-term incentive compensation, participation in standard benefit plans and other compensation may be approved by our board of directors. Ms. Muñoz's employment agreement has no fixed term.

If an initial public offering of our equity securities (an "IPO") occurs during Ms. Muñoz's employment, she is entitled to a one-time grant of restricted stock units or restricted share awards in amount equal to $1.5 million

divided by the IPO price per share of our common stock (the "IPO Award"). 50% of the IPO Award will be fully vested on date of grant, and the remaining 50% will vest in equal installments on the first, second and third anniversaries of the date of the IPO. Ms. Muñoz must remain employed by us through each vesting date in order to vest in the applicable portion of her IPO Award. Following an IPO, Ms. Muñoz would also be eligible to receive an annual incentive equity award grant in a form and at a time determined by our compensation committee on terms no less favorable to our other members of the senior management team, and subject to vesting and other terms of a company-wide equity plan to be implemented in connection with or following the IPO.

In the event Ms. Muñoz's employment is terminated by us without Cause or by Ms. Muñoz for Good Reason, she is entitled to severance equal to twelve months of her then-current base salary, payable in accordance with our normal payroll procedures during the twelve-month period following termination of employment, and a pro-rata portion of her annual incentive through the date of her termination of employment based on actual Company performance, payable when annual incentives are paid to other senior executives of the Company. We will also continue to pay the employer portion of the premiums associated with continued coverage under our health and welfare plans for Ms. Muñoz under COBRA until the earlier of (i) twelve months following her termination date, (ii) expiration of her eligibility for continuation coverage under COBRA, or (iii) the date on which she becomes eligible for group health insurance coverage in connection with new employment. This severance is contingent upon Ms. Muñoz's timely execution and non-revocation of a general release of claims. In the event Ms. Muñoz's employment is terminated due to death or disability, she (or her estate) is entitled to severance equal to a pro-rata portion of her annual target incentive through the date of her termination of employment.

If a Change of Control (as defined above) occurs prior to an IPO and Ms. Muñoz is still employed by us, all outstanding unvested equity based awards will vest in full upon the change of control. If Ms. Muñoz's employment is terminated by us for any reason other than for Cause or by Ms. Muñoz for Good Reason during the two year period immediately following a change of control that occurs following an IPO, subject to her execution and non-revocation of a release of claims, all of her unvested equity based awards will vest in full on the 60th day following her termination of employment.

For purposes of Ms. Muñoz's employment agreement, "Cause" means (i) conviction of a felony (or entry of a plea of guilty or nolo contendre with respect to a felony), (ii) fraudulent conduct, (iii) willful refusal to materially perform her duties (except during periods when she is unable to perform such duties as a result of her illness (either physical or mental) or other incapacity or excused absence or vacation) consistent with her position and title as reasonably directed by our board of directors, (iv) willful misconduct which has a material adverse effect on us or our reputation or our subsidiaries, or (v) a material breach by Ms. Muñoz of her obligations as set forth in the employment agreement.

For purposes of Ms. Muñoz's employment agreement "Good Reason" means Ms. Muñoz resigns from her employment with the Company as a result of one or more of the following events: (i) any material adverse change in her authority, responsibilities or duties such that Ms. Muñoz no longer has the title of, or serve or function as, our Chief Executive Officer (except due to illness (either physical or mental) or other incapacity or excused absence or vacation), (ii) a material breach by us of Ms. Muñoz's employment agreement (including, without limitation, any reduction in her base salary or annual incentive opportunity), or (iii) relocation of Ms. Muñoz's principal business location to an area outside of the Los Angeles, California metropolitan area.

The terms of Ms. Muñoz's employment agreement provide for a covenant not to compete with us or to solicit our employees and customers for a period of twelve months following her employment termination for any reason, a covenant to not disclose any confidential information at all times following a termination of Ms. Muñoz's employment for any reason, and a perpetual mutual non-disparagement covenant.

Ms. Muñoz's employment agreement includes a Code Section 280G "best-net cutback" provision. Such provision provides that in the event any payments or benefit provided under her employment agreement or any

other arrangement with us or our affiliates constitute "parachute payments" within the meaning of Section 280G of the Code, then such payments and/or benefits will either be (i) provided to Ms. Muñoz in full or (ii) be reduced to the extent necessary to avoid the excise tax imposed by Section 4999 of the Code, whichever results in Ms. Muñoz receiving a greater amount on an after-tax basis.

Marc Katz Employment Agreement

On December 13, 2019, we entered into an employment agreement with Marc Katz governing his services as our President & Chief Financial Officer. Mr. Katz's employment agreement provided for base salary, eligibility to participate in the Annual Incentive Plan, eligibility to receive long-term incentive compensation, participation in standard benefit plans, eligibility to receive severance (as described above) and other compensation as may have been approved by our board of directors. Mr. Katz's employment agreement had no fixed term.

Consistent with the severance terms provided to Mr. Katz pursuant to his employment agreement, the Company agreed, pursuant to the terms of a general release of claims executed by Mr. Katz at the time of his termination of employment and subject Mr. Katz's continued compliance with the restrictive covenants set forth in his employment agreement, to pay Mr. Katz cash severance consisting of (i) continued payment of his base salary for the one-year period following his termination of employment, and (ii) a pro-rata portion of Mr. Katz's annual bonus for fiscal year 2020 based on the achievement of the applicable performance measures for fiscal year 2020. We will also continue to pay the employer portion of the premiums associated with continued coverage under our health and welfare plans for Mr. Katz under COBRA until the earlier of (i) twelve months following his termination date, (ii) expiration of his eligibility for continuation coverage under COBRA, or (iii) the date on which he becomes eligible for group health insurance coverage in connection with new employment.

Michael Salmon Offer Letter

On May 14, 2018, we entered into an offer letter with Michael Salmon in connection with his hiring as our Senior Vice President of Planning and Allocation, which continues to govern his services as our Chief Operating Officer. Mr. Salmon's offer letter provides for a base salary, eligibility to participate in the Annual Incentive Plan, eligibility to receive long term incentive compensation, participation in the standard benefit plans and other compensation as may be approved by our board of directors. Mr. Salmon also received a $50,000 signing bonus, which was paid on the first pay period following his employment start date, as well as reimbursement for expenses incurred by Mr. Salmon in connection with the relocation of his principal residence to California. Mr. Salmon's offer letter has no fixed term.

If Mr. Salmon's employment is terminated by us with Cause or due to Mr. Salmon's death or disability, or Mr. Salmon resigns for any reason, we will pay Mr. Salmon any accrued and unpaid portion of his base salary and paid time off through the date of his termination of employment, payable according to normal payroll practices. Upon a termination of employment by us without Cause, he is entitled to severance equal to nine months' of current base salary, payable in installments in accordance with our normal payroll procedures during the nine-month period following Mr. Salmon's termination of employment. We will also continue to pay the employer portion of the premiums associated with continued coverage under our health and welfare plans for Mr. Salmon and his qualified beneficiaries under COBRA until the earlier of (i) the last day Mr. Salmon receives severance, and (ii) the expiration of his eligibility for continued coverage under COBRA as provided by applicable law. Additionally, upon such termination of employment within the twenty-four month period following June 7, 2019, and if Mr. Salmon permanently relocates back to New Jersey within three months following such termination of employment, we will provide Mr. Salmon with reimbursement for relocation expenses as we provided in connection with his relocation to California. Receipt of the severance payments and the relocation benefits are subject to Mr. Salmon executing (and not revoking) a general release of claims.

For purposes of Mr. Salmon's offer letter, "Cause" means (i) willful misconduct by Mr. Salmon, including but not limited to, dishonesty which materially and adversely reflects upon his ability to perform his duties to the Company, (ii) Mr. Salmon's conviction of, or the entry of a pleading of guilty or nolo contendre by Mr. Salmon to, any crime involving moral turpitude or any felony, (iii) fraud, embezzlement or theft against the Company, (iv) a material breach by Mr. Salmon of any material provision of any employment contract, assignment of inventions, confidentiality and/or nondisclosure agreement between Mr. Salmon and us, or (v) Mr. Salmon's failure to attend to his duties as assigned by our Chief Executive Officer, after written notice to Mr. Salmon and no less than a 90-day period to cure such failure (provided that such failure to perform is subject to cure with the passage of time).

The terms of Mr. Salmon's offer letter provide for a covenant not to solicit employees for a period of two years following his termination of employment for any reason, a covenant not to compete with the Company during his employment with us, and a covenant to not disclose any confidential and proprietary information (as defined in Mr. Salmon's offer letter) at all times following a termination of Mr. Salmon's employment for any reason.

Anne Stephenson Offer Letter

On August 9, 2019, we entered into an offer letter with Anne Stephenson in connection with her hiring as our Chief Merchandising and Product Officer, which continues to govern her services as our Chief Merchandising and Product Officer. Ms. Stephenson's offer letter provides for a base salary, eligibility to participate in the Annual Incentive Plan, eligibility to receive long term incentive compensation, participation in the standard benefit plans and other compensation as may be approved by our board of directors. Ms. Stephenson also received a $315,000 signing bonus, which was paid on the first pay period following her employment start date. Ms. Stephenson's offer letter has no fixed term.

Ms. Stephenson's offer letter provides for "at-will" employment, and upon a termination of Ms. Stephenson's employment for any reason, Mr. Stephenson would not be entitled to any additional severance pay or benefits other than as required by applicable law.

For purposes of Ms. Stephenson's offer letter, "Cause" means (i) willful misconduct, including, but not limited to, dishonesty which materially and adversely reflects upon her ability to perform your duties for the Company, (ii) her conviction of, or the entry of a pleading of guilty or nolo contendere by her to, any crime involving moral turpitude or any felony, (iii) fraud, embezzlement or theft by her against the Company or its affiliates, (iv) a material breach by her of any material provision of any agreement or policy, including any employment contract, assignment of inventions, confidentiality and/or nondisclosure agreement between her and the Company or its affiliates, or (v) her failure to fulfill her duties as assigned by the CEO of the Company, after written notice to her and no less than a 30-day period to cure such failure (provided that such failure to perform is subject to cure with the passage of time).

The terms of Ms. Stephenson's offer letter provide for a covenant not to solicit employees for a period of two years following her termination of employment for any reason, a covenant not to compete with the Company during her employment with us, and a covenant to not disclose any confidential and proprietary information at all times following a termination of Ms. Stephenson's employment for any reason.

Potential Payments upon Termination or Change of Control

Other than (i) pursuant to Ms. Muñoz's and Mr. Katz's employment agreements and Mr. Salmon's offer letter as described in "—Employment Agreements With Our Named Executive Officers," or (ii) pursuant to our NEO's Incentive Unit grant agreements as described in "—Long-Term Incentives" above, none of our NEOs have received or have a right to receive severance or other benefits upon a termination of employment, a change in control or a termination of employment following a change in control.

IPO Awards

If an IPO occurs during the employment of Ms. Muñoz and certain other members of our management that are not NEOs, they are entitled to one-time grants of restricted stock units or restricted stock shares ("IPO Awards") in amounts equal to $4.4 million in the aggregate. With the exception of Ms. Muñoz's agreement, the IPO Award agreements will expire if an IPO does not occur prior to the second anniversary of each date of the individual IPO Award agreements. 50% of the IPO Awards will be fully vested on date of grant, and the remaining 50% will vest in equal installments on the first, second and third anniversaries of the date of the IPO. These members of our management must remain employed by us through each vesting date in order to vest in the applicable portions of their IPO Awards. Consequently, we will recognize $2.2 million of share-based compensation expense related to these IPO Awards upon the consummation of the IPO with the remainder recognized over the three year vesting period.

Increase in Value of Liability-Classified Incentive Units

Based on the preliminary IPO price range, we will record a share-based compensation expense remeasurement adjustment related to the increase in the value of our liability-classified incentive units. We expect to record an adjustment of between approximately $70.0 million and $105.0 million in the three-month period ending July 31, 2021. The vested portion of these liability-classified incentive units will be settled and converted to common shares of Torrid Holdings Inc. at the time of the IPO, and as a result, there will be no further remeasurement adjustments recorded subsequent to the IPO.

Director Compensation

The following table shows the compensation earned during 2020, by each of our directors who are not named executive officers.

Name and Principal Position	Fees Earned or Paid in Cash ($)	Total ($)
Lisa Harper	100,000	100,000
Lawrence Molloy(1)	99,000	99,000

(1) Mr. Molloy ceased to be a director of the Company, effective April 30, 2021.

Narrative Disclosure Regarding Director Compensation Table

During 2020, Lisa Harper and Lawrence Molloy were paid $100,000 and $99,000, respectively, in fees in cash for services on our board of directors. During 2020, none of our directors (other than Lisa Harper and Lawrence Molloy) has received any cash, equity or other compensation for services rendered to us. Our directors and any of their respective affiliates are reimbursed for any out-of-pocket expenses incurred in connection with the performance of their duties as our directors. Ms. Harper and Mr. Molloy did not receive any reimbursements for out-of-pocket expenses in 2020.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information as of June 23, 2021 regarding the beneficial ownership of our common stock (1) immediately prior to and (2) as adjusted to give effect to this offering, by:

- each person or group who is known by us to own beneficially more than 5% of our outstanding shares of our common stock;
- each of our named executive officers;
- each of our directors and director nominees;
- all of our executive officers and directors as a group; and
- each selling stockholder.

For further information regarding material transactions between us and certain of our stockholders, see "Certain Relationships and Related Party Transactions."

Beneficial ownership for the purposes of the following table is determined in accordance with the rules and regulations of the SEC. These rules generally provide that a person is the beneficial owner of securities if such person has or shares the power to vote or direct the voting thereof, or to dispose or direct the disposition thereof or has the right to acquire such powers within 60 days. Common stock subject to restricted stock units or stock options that are currently exercisable or exercisable within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part are deemed to be outstanding and beneficially owned by the person holding the restricted stock units or stock options. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person except the percentage ownership of executive officers and directors as a group. Percentage of beneficial ownership is based on 110,000,000 shares of common stock outstanding, and 110,000,000 shares of common stock to be outstanding after the completion of this offering, assuming no exercise of the option to purchase additional shares, or 110,000,000 shares, assuming full exercise of the underwriters' option to purchase additional shares. Except as disclosed in the footnotes to this table and subject to applicable community property laws, we believe that each stockholder identified in the table possesses sole voting and investment power over all shares of common stock shown as beneficially owned by the stockholder. Unless otherwise indicated in the table or footnotes below, the address for each beneficial owner is c/o Torrid Holdings Inc., 18501 East San Jose Avenue, City of Industry, California 91748.

Name	Shares Beneficially Owned Prior to This Offering[1] Number	%	Shares to Be Sold in This Offering Assuming No Exercise of Overallotment Option Number	Shares to Be Sold in This Offering Assuming Full Exercise of Overallotment Option Number	Shares Beneficially Owned After This Offering Assuming No Exercise of Overallotment Option[1] Number	%	Shares Beneficially Owned After This Offering Assuming Full Exercise of Overallotment Option[1] Number	%
Greater than 5% and Selling Stockholders:								
Sycamore Partners Torrid, L.L.C. [2]	93,117,361	84.7	6,772,172	7,787,998	86,345,189	78.5	85,329,363	77.6
Other Selling Stockholders:								
Mark Mizicko	1,993,455	1.8	144,979	166,725	1,848,476	1.7	1,826,730	1.7
Donald L. Hendricks	1,944,705	1.8	141,433	162,648	1,803,272	1.6	1,782,057	1.6
Cynthia Levitt	597,841	*	43,479	50,001	554,362	*	547,840	*
Katherine S. Horton	557,362	*	40,535	46,616	516,827	*	510,746	*
Gwendolyn L. Stanley	424,400	*	30,865	35,495	393,535	*	388,905	*
All other selling stockholders[3]	776,615	*	55,643	63,989	720,972	*	712,626	*
Executive Officers and Directors:								
Elizabeth Muñoz[4]	2,217,663	2.0	158,487	182,260	2,059,176	1.9	2,035,403	1.9
George Wehlitz[5]	1,859,372	1.7	133,362	153,367	1,726,010	1.6	1,706,005	1.6
Michael Salmon	135,543	*	9,858	11,336	125,685	*	124,207	*
Anne Stephenson	97,892	*	7,119	8,187	90,773	*	89,705	*
Lisa Harper	6,353,432	5.8	462,068	531,378	5,891,364	5.4	5,822,054	5.3
Stefan L. Kaluzny	—	—	—	—	—	—	—	—
Dary Kopelioff	—	—	—	—	—	—	—	—
Theo Killion	—	—	—	—	—	—	—	—
All executive officers and directors as a group (8 persons)[6]	10,663,902	9.7	770,894	886,528	9,893,008	9.0	9,777,374	8.9

* Represents beneficial ownership of less than one percent (1%) of our outstanding common stock.

(1) The shares shown in this column are held by our direct parent, Torrid Holding, LLC, as of the date hereof but will be distributed to the beneficial owner shown in each row in the table below prior to the completion of this offering. The amounts in each row in the table below represent economic interests, indirectly, of our common stock based on an initial public offering price of $19.50 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after giving effect to such share distribution.

(2) Includes shares of common stock held directly by Sycamore Partners Torrid, L.L.C., which is owned directly or indirectly by (a) Sycamore Partners, L.P., (b) Sycamore Partners Associates-C, L.P., (c) Sycamore Partners Associates, L.P., (d) Sycamore Partners Associates Investments, L.P., (e) Sycamore Partners (Co-Invest), L.L.C. and (f) Sycamore Partners Associates Co-Invest, L.P. (the entities listed in clauses (a) through (f) above, collectively, the "Sycamore Entities"). The direct or indirect general partners or managing members of each of the Sycamore Entities are controlled directly or indirectly by Mr. Stefan Kaluzny, and each of the foregoing (including Mr. Stefan Kaluzny) expressly disclaims beneficial ownership of the shares of common stock of Torrid Holdings Inc. held by Sycamore Partners Torrid, L.L.C. except to the extent of their respective pecuniary interest therein, if any. The address for Sycamore Partners Torrid, L.L.C., the Sycamore Entities and Mr. Stefan Kaluzny is c/o Sycamore Partners Management, L.P., 9 W. 57th Street, 31st Floor, New York, NY 10019.

(3) Includes other selling stockholders who collectively beneficially own less than 1.0% of our capital stock. Includes 11,538 restricted stock units that will vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part.

(4) Includes 38,462 restricted stock units that will vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part.

(5) Includes 25,641 restricted stock units that will vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part.

(6) Includes 64,103 restricted stock units that will vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In connection with this offering, we will adopt a written policy with respect to related party transactions. Under our related person transaction policy, a "Related Person Transaction" is any transaction, arrangement or relationship between us or any of our subsidiaries and a Related Person. A "Related Person" is any of our executive officers, directors or director nominees, any stockholder beneficially owning in excess of 5% of our stock or securities exchangeable for our stock, any immediate family member of any of the foregoing persons, and any firm, corporation or other entity in which any of the foregoing persons is an executive officer, a partner or principal or in a similar position or in which such person has a 10% or greater beneficial ownership interest in such entity.

Pursuant to our Related Person Transaction policy, any Related Person Transaction must generally be approved by our Audit Committee. In approving any Related Person Transaction, our Audit Committee shall review all relevant information available to it about the Related Person Transaction. The Audit Committee may approve the Related Person Transaction only if the Audit Committee determines in good faith that, under all of the circumstances, the transaction is in the best interests of the Company and its shareholders.

Transition Services Agreement, Services Agreements and Other Transactions with Hot Topic

On May 1, 2015, Hot Topic entered into a Contribution Agreement pursuant to which Hot Topic contributed all of the existing assets and liabilities related to its former Torrid business to a newly-formed, separate and wholly-owned subsidiary of Hot Topic, Torrid LLC, and immediately thereafter, on May 1, 2015 until its termination on June 2, 2017, we had a transition services agreement ("Transition Services Agreement") with Hot Topic under which Hot Topic provided us with certain services to help ensure an orderly transition for us following the Separation. Under the Transition Services Agreement, Hot Topic provided us (or caused applicable third parties to provide) certain back office and general and administrative services, including information technology, logistics management and other specified services to ensure our stand-alone functionality. From June 2, 2017 until its termination on March 21, 2019, we had a services agreement ("Third Party Services Agreement") with Hot Topic, pursuant to which Hot Topic provided us (or caused applicable third parties to provide) certain services, including information technology, distribution and logistics management, real estate leasing and construction management and other services as may have been specified. On March 21, 2019, we entered into an amended and restated services agreement ("Amended and Restated Services Agreement") with Hot Topic under which Hot Topic provides us (or causes applicable third parties to provide) substantially similar services to those provided under the Third Party Services Agreement. The term of the Amended and Restated Services Agreement is three years, unless we or Hot Topic extend the agreement, or we terminate the agreement (or certain services under the agreement). We may terminate the various services upon written notice. Rates and costs related to the services provided under the Amended and Restated Services Agreement may change with approval from both parties. Each month, we are committed to pay Hot Topic for these services and reimburse Hot Topic for certain costs it incurs in the course of providing these services. We record payments made to Hot Topic under these service agreements in the applicable expense category in either cost of goods sold, or selling, general and administrative expenses.

On August 1, 2019, in connection with the IT Asset Purchase Agreement (as defined below), we entered into a services agreement ("Reverse Services Agreement") with Hot Topic, under which Torrid provides Hot Topic with certain information technology services. The term of the Reverse Services Agreement is three years, unless we or Hot Topic extend the agreement, or Hot Topic terminates the agreement. Torrid provides Hot Topic with the specified information technology services at no cost for the first three years of the Reverse Services Agreement, however Hot Topic bears certain capital and operating expenses that it incurs. Costs incurred in connection with providing the specified information technology services to Hot Topic are expensed as incurred in our consolidated statement of operations and comprehensive income. During 2019 and 2020, we incurred costs of $2.3 million and $3.0 million, respectively, in connection with providing these information technology services to Hot Topic. During the three-month periods ended May 2, 2020 and May 1, 2021, we incurred costs of

$0.7 million and $0.9 million, respectively, in connection with providing these information technology services to Hot Topic. In connection with the Reverse Services Agreement, we entered into an amendment to the Amended and Restated Services Agreement ("Amendment to Amended and Restated Services Agreement") with Hot Topic on August 1, 2019, pursuant to which sections pertaining to Hot Topic's provision of information technology services to Torrid were removed.

During 2018, 2019 and 2020, Hot Topic charged us $54.6 million, $35.3 million and $12.3 million, respectively, for various services under the applicable service agreements, of which $14.9 million, $14.5 million and $9.6 million, respectively, were recorded as components of cost of goods sold, and the remaining $39.7 million, $20.8 million and $2.7 million, respectively, were charged to selling, general and administrative expenses. During the three-month periods ended May 2, 2020 and May 1, 2021, Hot Topic charged us $3.7 million and $1.9 million, respectively, for various services under the applicable services agreements, of which $3.1 million and $1.3 million, respectively, were recorded as components of cost of goods sold, and the remaining $0.6 million and $0.6 million, respectively, were recorded as selling, general and administrative expenses. As of February 1, 2020 and May 1, 2021, we owed $0.4 million and $0.6 million, respectively, to Hot Topic under the applicable service agreements which are included in due to related parties in our consolidated balance sheets. As of January 30, 2021, we did not owe any amount to Hot Topic for these services.

Hot Topic incurs certain direct expenses on our behalf, such as payments to our non-merchandise vendors and each month, we pay Hot Topic for these pass-through expenses. As of February 1, 2020 and May 1, 2021, the net amount we owed Hot Topic for these expenses were $4.7 million and $1.2 million, respectively, which are included in due to related parties in our consolidated balance sheets. As of January 30, 2021, we had prepaid Hot Topic $0.4 million for these expenses, which are included in prepaid expenses and other current assets in our consolidated balance sheets.

On June 14, 2019, we used funds obtained from the Term Loan Credit Agreement to purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp. ("HTI"). HTI used the funds it received from us to redeem its Notes. We accounted for the purchase under the cost method in accordance with ASC 325, *Investments—Other*. On July 31, 2019, our parent issued the $214.6M Related Party Promissory Note Receivable (as defined below) to us in exchange for our $213.2 million investment in HTI's senior participating preferred stock, including $1.4 million of accrued interest. Due to the nature of this $214.6M Related Party Promissory Note Receivable (as defined below), we consider it to be an in-substance distribution to our parent and account for it as contra-equity.

On June 14, 2019, we entered into an asset purchase agreement ("IT Asset Purchase Agreement") with Hot Topic pursuant to which we purchased certain information technology assets from Hot Topic for $29.5 million on August 1, 2019. Funds obtained from the Term Loan Credit Agreement were used to make the purchase. We accounted for the purchase in accordance with subsections of ASC 805-50, *Business Combinations*, related to transactions between entities under common control. Consequently, we recorded the information technology assets we purchased from Hot Topic at their historical carrying amounts totaling $3.5 million and recognized the difference between the historical carrying amounts and the purchase price in equity. In addition, certain information technology-related obligations and personnel, along with associated assets of $1.4 million and liabilities of $0.1 million, were transferred from Hot Topic to Torrid. In connection with the IT Asset Purchase Agreement, we and Hot Topic agreed to enter into the Reverse Services Agreement and Amendment to Amended and Restated Services Agreement upon the closing date of the IT Asset Purchase Agreement, which was August 1, 2019.

Advisory Services Agreement

In connection with the Separation, we entered into an advisory services agreement with Sycamore, dated May 1, 2015 (the "Advisory Services Agreement"), pursuant to which Sycamore agreed to provide strategic planning and other related services to us. We are obligated to reimburse Sycamore for their expenses incurred in

connection with providing such advisory services to us. As of the end of 2019 and 2020, and as of May 1, 2021, there were no amounts due. During 2018, 2019, 2020, and the three-month periods ended May 2, 2020 and May 1, 2021, no amounts were paid under this agreement.

Sycamore's liability in connection with its performance of the services under the agreement is limited to that arising from its gross negligence or willful misconduct and we, along with our subsidiaries and affiliates, are responsible for indemnifying Sycamore against all claims relating to the agreement except to the extent arising from Sycamore's gross negligence or willful misconduct. The Advisory Services Agreement will expire by its terms on May 1, 2025 and will automatically be renewed on an annual basis thereafter unless we or Sycamore provides 90 days' prior written notice of our intent not to renew prior to the end of the then-current term.

From time to time, we reimburse Sycamore for certain management expenses it pays on our behalf. As of the end of 2019 and as of May 1, 2021, the amount due was not material and as of the end of 2020, there was no amount due. During each of the years 2018, 2019 and 2020, the reimbursements we made to Sycamore for such expenses were $0.1 million. During the three-month periods ended May 2, 2020 and May 1, 2021, we did not make any reimbursements to Sycamore.

Consulting Services Agreement

On March 11, 2021, Hot Topic entered into a consulting services agreement with our Chief Financial Officer, George Wehlitz, Jr., pursuant to which Hot Topic agreed to pay Mr. Wehlitz a consulting fee of $10,000 per month. The agreement was effective from January 3, 2021 and remained effective until May 31, 2021.

Reimbursement of Compensation Paid to Mr. Wehlitz

Between January 28, 2018 and August 1, 2018, we paid Mr. Wehlitz, our Chief Financial Officer, approximately $0.2 million for services provided to Hot Topic. We were reimbursed by Hot Topic for such payments.

Related Party Vendors

MGF Sourcing US, LLC, an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During 2018, 2019 and 2020, purchases from this supplier were $31.3 million, $35.9 million and $38.4 million, respectively, which accounted for less than 10% of total purchases in 2018, 2019 and 2020. During the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were $8.8 million and $16.9 million, respectively. As of the end of 2019 and 2020 and as of May 1, 2021, the net amounts we owed MGF Sourcing US, LLC for these purchases were $3.2 million, $8.0 and $5.6 million, respectively. This liability is included in due to related parties in our consolidated balance sheets. Prices paid to this supplier are negotiated on an arms-length basis and are substantially similar to the prices that we would pay to other suppliers of similar goods.

HU Merchandising LLC, a subsidiary of Hot Topic and an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During 2018, 2019 and 2020, purchases from this supplier were $0.5 million, $0.6 million and $0.4 million, respectively. During the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were $0.1 million and $0.2 million, respectively. As of the end of 2019 there were no amounts due for these purchases and as of the end of 2020 and May 1, 2021, the amount due to HU Merchandising, LLC was $0.1 million and $0.2 million, respectively. Prices paid to this supplier are negotiated on an arms-length basis and are substantially similar to the prices we would pay to other suppliers of similar goods.

Staples, Inc., an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During 2018, purchases from this supplier were $0.1 million. During 2019 and 2020 and the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were not material. As of the end of 2019 and 2020, the amounts due to this supplier were not material. As of May 1, 2021, there was no amount due.

We have a merchandise supply arrangement with Belk, Inc., an entity controlled by affiliates of Sycamore. During 2018, we recognized $0.4 million of revenue in net sales related to this arrangement. During 2019, 2020 and the three-month periods ended May 2, 2020 and May 1, 2021, we did not recognize any revenue from Belk. As of the end of 2019 and 2020 and as of May 1, 2021, there was no amount due to us from Belk, Inc.

Prior to 2020, Hot Topic provided us with licensing services for certain of our goods, such as license procurement and design services. During 2018 and 2019, Hot Topic charged us $0.5 million and $0.1 million, respectively, for these services, which were recorded as components of cost of goods sold. As of the end of 2019 and 2020, there were no amounts due to Hot Topic for these licensing services.

Letter of Support from Sycamore

In April 2020, we received a letter of support from Sycamore for up to $20.0 million of additional equity funding which, if necessary and sufficient, would be provided to further prevent noncompliance with the financial covenants in the Original Term Loan Credit Agreement through May 2021. In September 2020, we received an updated letter of support from Sycamore extending the equity funding commitment of up to $20.0 million, if necessary and sufficient, through January 2022. The letter of support was terminated as of May 6, 2021.

Stockholders' Agreement

In connection with this offering, we will enter into a Stockholders' Agreement with the Sycamore Stockholder (the "Stockholders' Agreement"). The Stockholders' Agreement will provide the Sycamore Stockholder with certain rights with respect to the designation of directors to serve on our board of directors. As set forth in the Stockholders' Agreement, for so long as the Sycamore Stockholder beneficially owns at least 50% of our common stock, it will be entitled to designate for nomination a majority of our board of directors. When the Sycamore Stockholder beneficially owns less than 50% of our common stock but owns at least 10% of our common stock, the Sycamore Stockholder will be entitled to designate for nomination a number of directors in proportion to its ownership of our common stock, rounded up to the nearest whole number. When the Sycamore Stockholder owns less than 10% of our common stock but owns at least 5% of our common stock, the Sycamore Stockholder will be entitled to designate for nomination the greater of (i) a number of directors in proportion to its ownership of our common stock, rounded up to the nearest whole number, and (ii) one director.

Registration Rights Agreement

In connection with this offering, we will enter into a registration rights agreement pursuant to which we will grant certain registration rights to certain funds managed by Sycamore and its affiliates and certain of their transferees, including the right, under certain circumstances and subject to certain restrictions, to require us to register under the Securities Act our common stock held by them. In addition, we will commit to file as promptly as possible after receiving a request from Sycamore, a shelf registration statement registering secondary sales of our common stock held by Sycamore. Sycamore also will have the right to exercise certain piggyback registration rights in respect of common stock held by them in connection with registered offerings requested by other registration rights holders or initiated by us.

Related Party Promissory Notes

From time to time, our parent issues promissory notes receivable to us. Due to the nature of these promissory notes receivable, we consider them to be in-substance distributions to our parent and account for them as contra-equity in accordance with ASC 310, *Receivables*. Consequently, these promissory notes receivable are reflected within equity in our consolidated balance sheets as reductions in additional paid-in capital, within capital distribution to Torrid Holding LLC, net of contribution, in our consolidated statements of stockholder's equity (deficit), and within capital distribution to Torrid Holding LLC, net of contribution, in our consolidated statements of cash flows as financing cash outflows. Associated interest due to us will be recorded as equity when actual interest payments are made. Historically, we have not received any interest payments from our parent.

On May 1, 2015, we issued a $45.0 million promissory note to our parent, Torrid Holding LLC, in exchange for cash, due on or before May 1, 2018, ("Related Party Promissory Note"). On June 16, 2016, we made a $29.8 million repayment of the Related Party Promissory Note and paid $0.2 million of related interest. The Related Party Promissory Note accrued interest at an annual compounding rate of 0.43% upon its maturity, which is equal to the federal rate for May 2015 for a short-term instrument with an annual compounding interest rate.

On January 9, 2018, we issued an amended and restated promissory note to Torrid Holding LLC for $15.3 million ("Amended Related Party Promissory Note"), which amended our Related Party Promissory Note. The amendment rolled the outstanding principal and accrued interest balances associated with the Related Party Promissory Note into the principal balance of the Amended Related Party Promissory Note. The Amended Related Party Promissory Note was due on or before January 9, 2024 and accrued interest at an annual compounding rate of 2.18% upon its maturity, which is equal to the applicable federal rate for January 2018 for a mid-term instrument with an annual compounding interest rate. All other material terms of the Amended Related Party Promissory Note were substantially similar to the Related Party Promissory Note it replaced. On December 20, 2018, we repaid the Amended Related Party Promissory Note and related interest in full. The payment consisted of $15.3 million of principal and $0.3 million of related interest.

On December 20, 2018, our parent issued a $61.4 million promissory note to us in exchange for cash, due on or before December 20, 2024 ("$61M Related Party Promissory Note Receivable"). The funds realized from the $61M Related Party Promissory Note Receivable were invested by our parent in HTI and used by HTI and Hot Topic for the partial redemption of its 9.25% senior secured notes ("Notes"). The $61M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 3.06% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $61.4 million lump sum principal payment due to us upon the December 20, 2024 maturity date. The total amount of interest our parent owed us as of the end of 2019 and 2020 and as of May 1, 2021 was $2.1 million, $4.0 million and $1.1 million, respectively.

On June 6, 2019, our parent issued a $20.0 million promissory note to us in exchange for cash, due on or before June 6, 2025 ("$20M Related Party Promissory Note Receivable"). The $20M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.78% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $20.0 million lump sum principal payment due to us upon the June 6, 2025 maturity date. The total amount of interest our parent owed us as of the end of 2019 and 2020 and as of May 1, 2021 was $0.4 million, $0.9 million and $1.1 million, respectively.

On June 14, 2019, our parent issued a $10.0 million promissory note to us in exchange for cash, due on or before June 14, 2025 ("$10M Related Party Promissory Note Receivable"). The $10M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.37% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $10.0 million lump sum principal payment due to us upon the June 14, 2025 maturity date. The total amount of interest our parent owed us as of the end of 2019 and 2020 and as of May 1, 2021 was $0.2 million, $0.5 million and $0.5 million, respectively.

On July 31, 2019, our parent issued a $214.6 million promissory note to us, due on or before July 31, 2025 ("$214.6M Related Party Promissory Note Receivable"). The $214.6M Related Party Promissory Note Receivable was issued to us in exchange for the $213.2 million investment we made in HTI (as defined below) on June 14, 2019 plus the associated $1.4 million investment income we earned through July 31, 2019. The $214.6M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.87% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $214.6 million lump sum principal payment due to us upon the July 31, 2025 maturity date. The total amount of interest our parent owed us as of the end of 2019 and 2020 and as of May 1, 2021 was $2.0 million, $6.1 million and $7.1 million, respectively.

On August 1, 2019, our parent issued a $1.2 million promissory note to us in exchange for cash, due on or before August 1, 2025 ("$1.2M Related Party Promissory Note Receivable"). The $1.2M Related Party

Promissory Note Receivable was issued to us in exchange for purchasing $1.2 million of senior participating preferred stock from HTI (as defined below) on behalf of our parent. The $1.2M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.87% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $1.2 million lump sum principal payment due to us upon the August 1, 2025 maturity date. The total amount of interest our parent owed us as of the end of 2019 and 2020 and as of May 1, 2021 was not material.

On November 26, 2019, our parent issued a $12.0 million promissory note to us in exchange for cash, due on or before November 26, 2025 ("$12M Related Party Promissory Note Receivable"). The $12M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.59% upon its maturity. As of the end of 2019 and 2020 and as of May 1, 2021, there was a $12.0 million lump sum principal payment due to us upon the November 26, 2025 maturity date. The total amount of interest our parent owed us as the end of 2019 was not material and the total amount of interest our parent owed us as of the end of 2020 and as of May 1, 2021 was $0.2 million and $0.3 million, respectively.

On June 14, 2021, our parent issued a $300.0 million promissory note to us in exchange for cash, due on or before June 14, 2027 ("$300M Related Party Promissory Note Receivable"). The $300M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.02% upon its maturity.

The Reorganization will result in the legal cancellation of each related party promissory note our parent issued to us, but will have no impact on our capitalization. See "Capitalization."

Issuance of Incentive Units by Torrid Holding LLC

During 2020, our parent, Torrid Holding LLC, issued 0.4 million Class E and Class F Torrid incentive units in the aggregate, net of forfeitures, to certain members of our management, including certain of our Named Executive Officers. During 2020, we recorded $7.8 million of share-based compensation expense, primarily due to an increase in the Torrid Holding LLC equity value. For more information, see Note 14 to our audited consolidated financial statements included elsewhere in this prospectus.

Special Cash Distribution

On June 14, 2021, we distributed the Special Cash Distribution to the holders of our direct and indirect equity interests, consisting of funds managed by Sycamore and members of our former and current management, including our listed executive officers. $285.6 million of the Special Cash Distribution was distributed to funds managed by Sycamore, which beneficially own the majority of our outstanding common stock, $1.3 million of the Special Cash Distribution was distributed to Elizabeth Muñoz, our Chief Executive Officer and a member of our board of directors, $1.1 million of the Special Cash Distribution was distributed to George Wehlitz, our Chief Financial Officer, $7.9 million of the Special Cash Distribution was distributed to Lisa Harper, a member of our board of directors, and the remaining $4.1 million was distributed to certain other persons, including members of our broader management team and certain former members of management.

DESCRIPTION OF CERTAIN INDEBTEDNESS

The following is a summary of the material provisions relating to our material indebtedness. The following summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the corresponding agreement or instrument, including the definitions of certain terms therein that are not otherwise defined in this prospectus. You should refer to the relevant agreement or instrument for additional information, copies of which will be filed with the SEC once available.

New Term Loan Credit Agreement

On June 14, 2021, we entered into a term loan credit agreement ("New Term Loan Credit Agreement") among Bank of America, N.A., as agent, and the lenders party thereto (the "Lenders").

The New Term Loan Credit Agreement provides for term loans in an initial aggregate amount of $350.0 million ("Principal"), which is recorded net of an original issue discount ("OID") of $3.5 million and has a maturity date of on or about June 14, 2028. In connection with the New Term Loan Credit Agreement, we paid financing costs of approximately $6.0 million.

The $346.5 million proceeds of the New Term Loan Credit Agreement, net of OID, were used to (i) repay and terminate the Original Term Loan Credit Agreement; (ii) make a $131.7 million distribution to the direct and indirect holders of our equity interests; and (iii) pay for financing costs associated with the New Term Loan Credit Agreement.

Loans made pursuant to the New Term Loan Credit Agreement bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate quoted by The Wall Street Journal, (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month, plus 1.00% (in each case, subject to a floor of 1.75%); or (b) at a LIBOR rate for the interest period relevant to such borrowing (subject to a floor of 0.75%), in each case plus an applicable margin of 5.50% for LIBOR borrowings and 4.50% for base rate borrowings.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we elect the Base rate loan, interest is due and payable the last day of each calendar quarter.

In addition to paying interest on the outstanding Principal under the New Term Loan Credit Agreement, we are required to make fixed mandatory repayments of the Principal on the last business day of each fiscal quarter until maturity commencing with the second full fiscal quarter following the closing date ("Repayment"). For each of the fiscal quarters until the maturity date and starting with the fourth fiscal quarter of 2021, Repayments represent 1.25% of the Principal, reduced as a result of the application of prior Prepayments, as defined below.

Under the New Term Loan Credit Agreement, we are also required to make variable mandatory prepayments of the Principal, under certain conditions as described below, approximately 102 days after the end of each fiscal year (each, a "Prepayment"). Prepayments, if applicable, commence at the end of 2022 and represent between 0% and 50% (depending on our first lien net leverage ratio) of Excess Cash Flow (as defined in the New Term Loan Credit Agreement) in excess of $10.0 million, minus prepayments of Principal, the Amended ABL Facility (to the extent accompanied by a permanent reduction in the commitments thereunder) and certain other specified indebtedness and amounts in connection with certain other enumerated items.

In addition to mandatory Repayment and Prepayment obligations, we may at our option, prepay a portion of the outstanding Principal ("Optional Prepayment"). If we make Optional Prepayments before June 14, 2023, we will be subject to penalties ranging from 1.00% to 2.00% of the aggregate principal amount.

All of Torrid LLC's existing domestic subsidiaries and Torrid Intermediate LLC unconditionally guarantee all obligations under the New Term Loan Credit Agreement. Substantially all of the assets of Torrid LLC, Torrid LLC's existing subsidiaries and Torrid Intermediate LLC will secure all such obligations and the guarantees of those obligations, subject to certain exceptions.

The New Term Loan Credit Agreement also contains a number of covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: create, incur or assume liens on our assets or property; incur additional indebtedness; issue preferred or disqualified stock; consolidate or merge; sell assets; pay dividends or make distributions, make investments, or engage in transactions with our affiliates.

As of June 23, 2021, total borrowings, net of OID and financing costs, of $340.5 million remain outstanding under the New Term Loan Credit Agreement.

Amended ABL Facility

In May 2015, we entered into a credit agreement for a senior secured asset-based revolving credit facility ("ABL Facility") of $50.0 million (subject to a borrowing base), with Bank of America, N.A. On October 23, 2017, we entered into an amended and restated credit agreement which amended the ABL Facility and this agreement was subsequently amended on June 14, 2019, September 4, 2019 (the ABL Facility as so amended, the "Original ABL Facility") and on June 14, 2021 (the Original ABL Facility as so amended, the "Amended ABL Facility"). Under the Amended ABL Facility, (i) $150.0 million in aggregate commitments (subject to a borrowing base) are available to us and (ii) we have a right to request additional commitments of up to (a) $50.0 million plus (b) the aggregate principal amount of any permanent principal reductions we may take plus (c) the amount by which the borrowing base exceeds the aggregate commitments (subject to customary conditions precedent). The principal amount outstanding of the loans under the Amended ABL Facility is due and payable in full on June 14, 2026.

The borrowing base for the Amended ABL Facility, at any time equals the sum of 90% of eligible credit card receivables, plus 90% of the appraised net orderly liquidation value of eligible inventory and eligible in-transit inventory multiplied by the cost of such eligible inventory and eligible in-transit inventory (to be increased to 92.5% during the period beginning on September 1 of each year and ending on December 31 of each year). The Amended ABL Facility, includes borrowing capacity for letters of credit and for borrowings on same-day notice, referred to as Swing Line Loans, and is available in U.S. dollars.

The lenders under this facility are not under any obligation to provide any such additional commitments, and any increase in commitments is subject to customary conditions precedent. If we were to request any such additional commitments and the existing lenders or new lenders were to agree to provide such commitments, the size of the Amended ABL Facility, could increase to at least $200.0 million, but our ability to borrow under this facility would still be limited by the amount of the borrowing base.

Borrowings under the Amended ABL Facility, bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate of Bank of America, N.A., (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate plus 1.00%; or (b) at a LIBOR rate for the interest period relevant to such borrowing adjusted for certain costs, in each case plus an applicable margin that ranges from 1.25% to 1.75% for LIBOR borrowings and 0.25% to 0.75% for base rate borrowings, in each case, based on average daily availability.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we opt for the base rate (including a Swing Line Loan), interest is due and payable on the first business day of each month and on the maturity date.

In addition to paying interest on outstanding principal under the Amended ABL Facility, we are required to pay a commitment fee in respect of unutilized commitments. The commitment fee ranges between 0.25% and 0.375% per annum of unutilized commitments and will be subject to adjustment each fiscal quarter based on the amount of unutilized commitments during the immediately preceding fiscal quarter. We must also pay customary letter of credit fees and agent fees.

If at any time the aggregate amount of outstanding loans, unreimbursed letter of credit drawings and undrawn letters of credit under the Amended ABL Facility, exceeds the lesser of (a) the commitment amount and (b) the borrowing base, we will be required to repay outstanding loans and/or cash collateralize letters of credit in an aggregate amount equal to such excess, with no reduction of the commitment amount.

We may voluntarily reduce the unused portion of the commitment amount and repay outstanding loans at any time. Prepayment of the loans may be made without premium or penalty other than customary “breakage” costs with respect to LIBOR loans.

All obligations under the Amended ABL Facility are unconditionally guaranteed by substantially all of Torrid Intermediate LLC’s existing majority-owned domestic subsidiaries and will be required to be guaranteed by certain of Torrid Intermediate LLC’s future domestic majority-owned subsidiaries. All obligations under the Amended ABL Facility, and the guarantees of those obligations, will be secured, subject to certain exceptions, by substantially all of Torrid Intermediate LLC’s assets.

The Amended ABL Facility requires us to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 if we fail to maintain Specified Availability, as defined by the Amended ABL Facility of at least the greater of 10% of the Loan Cap, as defined by the Amended ABL Facility and $7.0 million. The Amended ABL Facility, contains a number of other covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: incur additional indebtedness; pay dividends on our capital stock or redeem, repurchase or retire our capital stock or our other indebtedness; make investments, loans and acquisitions; engage in transactions with our affiliates; sell assets, including capital stock of our subsidiaries; alter the business we conduct; consolidate or merge; and incur liens.

The Amended ABL Facility specifically restricts dividends and distributions, aside from amounts to cover ordinary operating expenses and taxes, between our subsidiaries and to us. However, dividends and distributions are permitted at any time that either (1) availability under the Amended ABL Facility is equal to or greater than 15% of the maximum borrowing amount on a pro forma basis and we are pro forma compliant with a 1.00 to 1.00 fixed charge coverage ratio or (2) availability under the Amended ABL Facility, is equal to or greater than 20% of the maximum borrowing amount on a pro forma basis.

Availability under the Amended ABL Facility, as of June 23, 2021 was $145.1 million, which reflects no borrowings and $4.9 million of standby letters of credit issued and outstanding.

DESCRIPTION OF CAPITAL STOCK

The following is a description of the material terms of our certificate of incorporation and bylaws as they will be in effect upon completion of this offering. The following description may not contain all of the information that is important to you. To understand them fully, you should read our certificate of incorporation and bylaws, copies of which are or will be filed with the SEC as exhibits to the registration statement, of which this prospectus is a part.

Authorized Capitalization

Our authorized capital stock consists of 1.0 billion shares of common stock, par value $0.01 per share, and 5.0 million shares of preferred stock, par value $0.01 per share. On June 23, 2021, there were 110,000,000 shares of our common stock outstanding, held of record by one stockholder. Based upon shares of our common stock outstanding as of June 23, 2021, there will be 110,000,000 shares of our common stock outstanding upon completion of this offering, and no shares of preferred stock will be outstanding.

Common Stock

Voting Rights

Each share of common stock entitles the holder to one vote with respect to each matter presented to our stockholders on which the holders of common stock are entitled to vote. Subject to any rights that may be applicable to any then outstanding preferred stock, our common stock votes as a single class on all matters relating to the election and removal of directors on our board of directors and as provided by law. Holders of our common stock will not have cumulative voting rights. Except in respect of matters relating to the election or removal of directors on our board of directors and as otherwise provided in our certificate of incorporation or required by law, all matters to be voted on by our stockholders must be approved by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the subject matter. In the case of election of directors, all matters to be voted on by our stockholders must be approved by a plurality of the votes entitled to be cast by all shares of common stock.

Dividend Rights

Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of our outstanding shares of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. Because we are a holding company, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions to us, including restrictions under the terms of the agreements governing our indebtedness. See “Description of Certain Indebtedness.” See also “Dividend Policy.”

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, holders of our common stock would be entitled to share ratably in our assets that are legally available for distribution to stockholders after payment of our debts and other liabilities. If we have any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distribution and/or liquidation preferences. In either such case, we must pay the applicable distribution to the holders of our preferred stock before we may pay distributions to the holders of our common stock.

Other Rights

Our stockholders have no preemptive, conversion or other rights to subscribe for additional shares. All outstanding shares are, and all shares offered by this prospectus will be, when sold, validly issued, fully paid and nonassessable. There will be no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

Listing

We have applied for listing of our common stock on the NYSE under the symbol "CURV."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company.

Preferred Stock

Our certificate of incorporation will authorize our board of directors to provide for the issuance of shares of preferred stock in one or more series and to fix the powers (including voting powers, if any), preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference and to fix the number of shares to be included in any such series without any further vote or action by our stockholders. Any preferred stock so issued may rank senior to our common stock with respect to the payment of dividends or amounts upon liquidation, dissolution or winding up, or both. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our Company without further action by the stockholders and may adversely affect the voting and other rights of the holders of common stock. The issuance of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of common stock, including the loss of voting control to others. At present, we have no plans to issue any of the preferred stock.

Corporate Opportunity

As permitted under the DGCL, in our certificate of incorporation, we renounce any interest or expectancy in, or any offer of an opportunity to participate in, specified business opportunities that are presented to us or one or more of our officers, directors or stockholders. In recognition that (i) directors, principals, members, associated funds, employees, officers and/or other representatives of the Sycamore Investors may serve as directors and/or officers of ours, and the Sycamore Investors, not including us (the "Sycamore Entities"), may engage in similar activities or lines of business that we do, and (ii) members of our board of directors who are not employees of the Company ("Non-Employee Directors" and, collectively with the Sycamore Entities, the "Identified Persons") and their respective affiliates may engage in similar activities or lines of business that we do, our certificate of incorporation provides for the allocation of certain corporate opportunities between us and the Identified Persons. Specifically, none of the Identified Persons have any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business in which we or any or our affiliates now engage in or propose to engage in or otherwise competing with us or any of our affiliates. In the event that a Identified Person acquires knowledge of a potential transaction or matter which may be a corporate opportunity for such person and us or any of our affiliates, we will not have any expectancy in such corporate opportunity, and the Identified Person will not have any duty to present such corporate opportunity to us or our affiliates and may pursue or acquire such corporate opportunity for itself or direct such opportunity to another person. A corporate opportunity that a Non-Employee Director acquires knowledge of will not belong to us unless the corporate opportunity at issue is expressly offered in writing to such person solely in his or her capacity as a director or officer of ours. In addition, the following corporate opportunities will not be deemed to be a potential Corporate Opportunity for the Company: (1) those we

are not financially able, contractually permitted or legally able to undertake; (2) those not in our line of business; (3) those of no practical advantage to us; and (4) those in which we have no interest or reasonable expectancy. Except with respect to the Identified Persons, the corporate opportunity doctrine applies as construed pursuant to applicable Delaware laws, without limitation.

Antitakeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

Our certificate of incorporation and our bylaws will contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Action By Written Consent, Special Meeting of Stockholders and Advance Notice Requirements for Stockholder Proposals

Our certificate of incorporation will provide that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting from and after the Trigger Event. Our certificate of incorporation and bylaws will also provide that, except as otherwise required by law and subject to the rights of the holders of any series of preferred stock, special meetings of the stockholders can be called by or at the direction of our board of directors or the chairman of our board of directors, including at the request of holders of not less than a majority of the combined voting power of our common stock, and, from and after the Trigger Event, only by or at the direction of our board of directors or the chairman of our board of directors. Except as described above, stockholders will not be permitted to call a special meeting or to require our board of directors to call a special meeting.

In addition, our bylaws require advance notice procedures for stockholder proposals to be brought before an annual meeting of the stockholders, including the nomination of directors. Stockholders at an annual meeting may only consider the proposals specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors, or by a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered a timely written notice in proper form to our secretary, of the stockholder's intention to bring such business before the meeting. Prior to the Trigger Event, the Sycamore Investors will not be required to comply with the advance notice procedures applicable to other stockholders.

These provisions could have the effect of delaying until the next stockholder meeting any stockholder actions, even if they are favored by the holders of a majority of our outstanding voting securities.

Classified Board of Directors

Our certificate of incorporation will provide that our board of directors will be divided into three classes of directors, with the classes as nearly equal in number as possible. As a result, approximately one-third of our board of directors will be elected each year. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our board of directors.

Removal of Directors

Under the DGCL, unless otherwise provided in our certificate of incorporation, directors serving on a classified board may be removed by the stockholders only for cause. Our certificate of incorporation will provide that directors (other than the directors elected by the holders of any series of preferred stock, voting separately as a series or together with one or more other such series, as the case may be) may be removed with or without cause at any time upon the affirmative vote of holders of at least a majority of the votes to which all the stockholders would be entitled to cast until the Trigger Event. From and after the Trigger Event, directors may only be removed from office for cause and only upon the affirmative vote of at least 75% of the voting power of all the then-outstanding shares of our capital stock entitled to vote thereon, voting together as a single class.

Amendment to Certificate of Incorporation and Bylaws

The DGCL provides generally that the affirmative vote of a majority of the outstanding stock entitled to vote on amendments to a corporation's certificate of incorporation or bylaws is required to approve such amendment, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our bylaws may be amended, altered, changed or repealed by a majority vote of our board of directors, provided that, in addition to any other vote otherwise required by law, from and after the Trigger Event, the affirmative vote of at least 75% of the voting power of our outstanding shares of common stock will be required to amend, alter, change or repeal our bylaws. Additionally, from and after the Trigger Event, the affirmative vote of at least 75% of the voting power of the outstanding shares of common stock entitled to vote on the adoption, alteration, amendment or repeal of our certificate of incorporation, voting as a single class, will be required to amend or repeal or to adopt any provision inconsistent with the following provisions of our certificate of incorporation.

- the provision requiring a 75% supermajority vote for stockholders to amend our Bylaws;
- the provisions providing for a classified board of directors (the election and term of our directors);
- the provisions regarding removal of directors;
- the provisions regarding stockholder action by written consent;
- the provisions regarding calling special meetings of stockholders;
- the provisions regarding filling vacancies on our board of directors and newly created directorships;
- the provisions regarding competition and corporate opportunities;
- the provisions regarding Section 203 of the DGCL;
- the provisions eliminating monetary damages for breaches of fiduciary duty by a director; and
- the amendment provision requiring that the above provisions be amended only with a 75% supermajority vote.

This requirement of a supermajority vote to approve amendments to our certificate of incorporation and bylaws could enable a minority of our stockholders to exercise veto power over any such amendments.

Delaware Anti-Takeover Statute

Section 203 of the DGCL provides that if a person acquires 15% or more of the voting stock of a Delaware corporation, such person becomes an "interested stockholder" and may not engage in certain "business combinations" with the corporation for a period of three years from the time such person acquired 15% or more of the corporation's voting stock, unless: (1) our board of directors approves the acquisition of stock or the merger transaction before the time that the person becomes an interested stockholder; (2) the interested stockholder owns at least 85% of the outstanding voting stock of the corporation at the time the merger transaction commences (excluding voting stock owned by directors who are also officers and certain employee stock plans); or (3) the merger transaction is approved by our board of directors and by the affirmative vote at a meeting, not by written consent, of stockholders of 2/3 of the holders of the outstanding voting stock which is not owned by the interested stockholder. A Delaware corporation may elect in its certificate of incorporation or bylaws not to be governed by this particular Delaware law.

We have elected in our certificate of incorporation to opt out of Section 203 of the DGCL.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of our common stock in the public market, or the perception that such sales may occur, could adversely affect the prevailing market price of our common stock. No prediction can be made as to the effect, if any, future sales of shares, or the availability of shares for future sales, will have on the market price of our common stock prevailing from time to time. The sale of substantial amounts of our common stock in the public market, or the perception that such sales could occur, could adversely affect the prevailing market price of our common stock.

Sale of Restricted Shares

Upon completion of this offering, we will have 110,000,000 shares of common stock outstanding. Of these shares of common stock, the 9,200,000 shares of common stock being sold by the selling stockholders in this offering (including any shares sold by the selling stockholders upon exercise of the underwriters' option to purchase additional shares), will be freely tradable without restriction under the Securities Act, except for any such shares which may be held or acquired by an "affiliate" of ours, as that term is defined in Rule 144 promulgated under the Securities Act, which shares will be subject to the volume limitations and other restrictions of Rule 144 described below. The remaining 100,800,000 shares of common stock held by our existing stockholders upon completion of this offering will be "restricted securities," as that phrase is defined in Rule 144, and may be resold only after registration under the Securities Act or pursuant to an exemption from such registration, including, among others, the exemptions provided by Rule 144 and 701 under the Securities Act, which rules are summarized below. These remaining shares of common stock held by our existing stockholders upon completion of this offering will be available for sale in the public market after the expiration of the lock-up agreements described in "Underwriting," taking into account the provisions of Rules 144 and 701 under the Securities Act.

Rule 144

In general, under Rule 144, as currently in effect, a person who is not deemed to be our affiliate for purposes of Rule 144 or to have been one of our affiliates at any time during the three months preceding a sale and who has beneficially owned the shares of common stock proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares of common stock without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares of common stock proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person is entitled to sell those shares of common stock without complying with any of the requirements of Rule 144. In general, six months after the effective date of the registration statement of which this prospectus forms a part, under Rule 144, as currently in effect, our affiliates or persons selling shares of common stock on behalf of our affiliates are entitled to sell, within any three-month period, a number of shares of common stock that does not exceed the greater of (1) 1% of the number of shares of common stock then outstanding and (2) the average weekly trading volume of the shares of common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale. Sales under Rule 144 by our affiliates or persons selling shares of common stock on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

In general, under Rule 701, any of our employees, directors, officers, consultants or advisors who acquired shares from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering, are eligible to resell such shares in reliance upon Rule 144 beginning 90 days after the date of this prospectus. If such person is not an affiliate, the sale may be made subject only to the manner-of-sale restrictions of Rule 144. If such a person is an affiliate, the sale may be made under Rule 144 without compliance with its one-year minimum holding period, but subject to the other Rule 144 restrictions.

10b5-1 Plans

Prior to or after the completion of the offering, certain of our employees, including our executive officers, and/or directors may enter into written trading plans that are intended to comply with Rule 10b5-1 under the Exchange Act. Sales under these trading plans would not be permitted until the expiration of the lock-up agreements relating to the offering described above.

Lock-Up Agreements

We, each of our officers and directors and the selling stockholders have agreed, subject to certain exceptions, with the underwriters not to dispose of or hedge any of the shares of common stock or securities convertible into or exchangeable for, or that represent the right to receive, shares of common stock during the period from the date of the underwriting agreement to be executed by us in connection with this offering continuing through the date that is 180 days after the date of this prospectus, except with the prior written consent of Morgan Stanley & Co. LLC, BofA Securities, Inc. and Goldman Sachs & Co. LLC. See "Underwriting."

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS TO NON-U.S. HOLDERS

The following is a summary of material U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock to a non-U.S. holder (as defined below) that purchases shares of our common stock in this offering.

This summary is based upon the provisions of the U.S. Internal Revenue Code of 1986, as amended, which we refer to as the "Code," the Treasury regulations promulgated thereunder and administrative and judicial interpretations thereof, all as of the date hereof. Those authorities may be changed, possibly with retroactive effect, so as to result in U.S. federal income tax consequences different from those summarized below. We cannot assure you that a change in law, possibly with retroactive effect, will not alter significantly the tax considerations that we describe in this summary. We have not sought and do not plan to seek any ruling from the U.S. Internal Revenue Service, which we refer to as the IRS, with respect to statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with our statements and conclusions.

This summary does not address all aspects of U.S. federal income taxes that may be relevant to non-U.S. holders in light of their personal circumstances, and does not address the Medicare tax on certain investment income, the alternative minimum tax, the rules regarding qualified small business stock under Section 1202 of the Code, U.S. federal estate or gift tax laws, any state, local or non-U.S. tax laws or any tax treaties or any federal taxes other than U.S. federal income taxes. This summary also does not address tax considerations applicable to investors that may be subject to special treatment under the U.S. federal income tax laws, such as:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- real estate investment trusts or regulated investment companies;
- brokers, dealers or traders in securities or foreign currencies;
- traders in securities that use the mark-to-market method of accounting for U.S. federal income tax purposes;
- corporations that accumulate earnings to avoid U.S. federal income tax;
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- "qualified foreign pension funds" (within the meaning of Section 897(1)(2) of the Code and entities, all of the interests of which are held by qualified foreign pension funds);
- tax-qualified retirement plans;
- controlled foreign corporations;
- passive foreign investment companies;
- persons that own, or have owned, actually or constructively, more than 5% of our common stock; and
- partnerships or other pass-through entities for U.S. federal income tax purposes or holders of interests therein.

Such non-U.S. holders should consult their own tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.

This summary applies only to a non-U.S. holder that holds our common stock as a capital asset within the meaning of Section 1221 of the Code (generally property held for investment).

If you are considering the purchase of our common stock, you should consult your own tax advisor concerning the particular U.S. federal income tax consequences to you of the purchase, ownership and disposition of our common stock, as well as the consequences to you arising under U.S. tax laws other than the federal income tax law or under the laws of any other taxing jurisdiction.

Non-U.S. Holder Defined

For purposes of this summary, a "non-U.S. holder" means a beneficial owner of our common stock that is not for U.S. federal income tax purposes a partnership or any of the following:

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

In the case of a holder that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of a partner in such partnership generally will depend upon the status of the partner and the activities of the partner and the partnership. If you are a partner in a partnership holding our common stock, then you should consult your own tax advisor.

Dividends

As discussed under the section entitled "Dividend Policy" above, we do not currently anticipate paying dividends. In the event that we do make a distribution of cash or property (other than certain stock distributions) with respect to our common stock (or certain redemptions that are treated as distributions with respect to our common stock), any such distributions will be treated as a dividend for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). If the amount of a distribution paid on our common stock exceeds our current and accumulated earnings and profits, such excess will be allocated ratably among each share of common stock with respect to which the distribution is paid and treated first as a tax-free return of capital to the extent of your adjusted tax basis in each such share, and thereafter as capital gain from a sale or other disposition of such share of common stock, which is subject to tax as described below under the heading "—Gain on Disposition of Common Stock." Your adjusted tax basis is generally the purchase price of such shares, reduced by the amount of any such tax-free returns of capital.

Subject to backup withholding requirements, the withholding requirements under FATCA (as defined below) and the treatment of effectively connected dividends, each of which is discussed below, dividends paid to you generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. If you wish to claim the benefit of an applicable treaty rate to avoid or reduce withholding of U.S. federal income tax for dividends, then you must provide the withholding agent with a properly completed IRS Form W-8BEN or IRS form W-8BEN-E (or other applicable form) and

certify under penalties of perjury that you are not a U.S. person and are eligible for such treaty benefits. This certification must be provided to us or our paying agent prior to the payment of dividends and must be updated periodically. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent, which then will be required to provide certification to us or our paying agent, either directly or through other intermediaries. Non-U.S. holders that do not timely provide the required certification, but that qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

Dividends that are effectively connected with the conduct of a trade or business by you within the United States and, where a tax treaty applies, are generally attributable to a United States permanent establishment or fixed base maintained by you within the United States are subject to U.S. federal income tax on a net income basis at the rates and in the manner generally applicable to U.S. persons. Such effectively connected dividends will not be subject to U.S. withholding tax if the non-U.S. holder satisfies certain certification requirements by providing the applicable withholding agent with a properly executed IRS Form W-8ECI (or other applicable or successor form) certifying eligibility for exemption. Any such effectively connected dividends received by a foreign corporation may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

Gain on Disposition of Common Stock

Subject to the discussions below regarding FATCA and backup withholding, a non-U.S. holder generally will not be subject to U.S. federal income tax with respect to gain realized on the sale or other taxable disposition of our common stock, unless:

- the gain (1) is effectively connected with a trade or business you conduct in the United States, and, (2) in cases in which certain tax treaties apply, is attributable to a United States permanent establishment or fixed base maintained by you in the United States (in which case the special rules described below apply);
- if you are an individual, you are present in the United States for 183 days or more in the taxable year of the sale or other taxable disposition and certain other requirements are met (in which case the gain would be subject to a flat 30% tax, or such reduced rate as may be specified by an applicable income tax treaty, which may be offset by U.S.-source capital losses, even though the individual is not considered a resident of the United States, provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses); or
- we are or have been during a specified testing period a "United States real property holding corporation" ("USRPHC") for U.S. federal income tax purposes, and certain other conditions are met.

We believe that we have not been and are not, and we do not anticipate becoming, a "United States real property holding corporation" for U.S. federal income tax purposes. In general, we would be a USRPHC if the value of our interests in U.S. real property comprised at least half of the value of our business assets and our U.S. and non-U.S. real property interests. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our U.S. real property interests relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a non-U.S. holder of our common stock will not be subject to U.S. federal income tax if our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such non-U.S. holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the non-U.S. holder's holding period. If we were to become a USRPHC and our common stock were not considered

to be "regularly traded" on an established securities market during the calendar year in which the relevant disposition by a non-U.S. holder occurs, such non-U.S. holder (regardless of the percentage of stock owned) would be subject to U.S. federal income tax on a sale or other taxable disposition of our common stock and a 15% withholding tax would apply to the gross proceeds from such disposition.

If any gain from the sale, exchange or other taxable disposition of our common stock, (1) is effectively connected with a U.S. trade or business conducted by a non-U.S. holder and (2) if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, is attributable to a permanent establishment or a fixed base maintained by such non-U.S. holder in the United States, then the gain generally will be subject to U.S. federal income tax at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. If the non-U.S. holder is a corporation, under certain circumstances, that portion of its earnings and profits that is effectively connected with its U.S. trade or business, subject to certain adjustments, generally would be subject to a "branch profits tax." The branch profits tax rate is equal to 30%, as adjusted for certain items, although an applicable income tax treaty between the United States and the non-U.S. holder's country of residence might provide for a lower rate.

Information Reporting and Backup Withholding Tax

We must report annually to the IRS and to you the amount of dividends paid to you and the amount of tax, if any, withheld with respect to such dividends. The IRS may make this information available to the tax authorities in the country in which you are resident.

In addition, you may be subject to information reporting requirements and backup withholding tax (currently at a rate of 24%) with respect to dividends paid on, and the proceeds from the disposition of, shares of our common stock, unless, generally, you certify under penalties of perjury on IRS Form W-8BEN, IRS Form W-8BEN-E or another appropriate version of IRS Form W-8 that you are not a U.S. person or you otherwise establish an exemption. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that you are a U.S. person.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding tax rules may be allowed as a refund or a credit against your U.S. federal income tax liability, provided the required information is timely furnished by you to the IRS.

FATCA

The Foreign Account Tax Compliance Act and the rules and regulations promulgated thereunder, or collectively, "FATCA," impose withholding tax at a rate of 30% on dividends on our common stock paid to a "foreign financial institution" (as specially defined under these rules), unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding the U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) or otherwise establishes an exemption. FATCA also generally imposes a U.S. federal withholding tax of 30% on dividends on our common stock paid to a "non-financial foreign entity" (as specially defined for purposes of these rules) unless such entity provides the withholding agent with a certification identifying certain substantial direct and indirect U.S. owners of the entity, certifies that there are none or otherwise establishes an exemption. Additionally, although FATCA withholding may also apply to gross proceeds of a disposition of our common stock, proposed regulations, which taxpayers are permitted to rely on until final regulations are issued, eliminate withholding on such gross proceeds. The withholding provisions under FATCA generally apply to dividends on our common stock. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this paragraph. Non-U.S. holders should consult their tax advisors regarding the possible implications of FATCA on their investment in our common stock. THE

SUMMARY OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES ABOVE IS INCLUDED FOR GENERAL INFORMATION PURPOSES ONLY. POTENTIAL PURCHASERS OF OUR COMMON STOCK ARE URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSIDERATIONS OF PURCHASING, OWNING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

UNDERWRITING

Morgan Stanley & Co. LLC, BofA Securities, Inc. and Goldman Sachs & Co. LLC are acting as representatives (the "representatives") of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us, the selling stockholders and the underwriters, we and the selling stockholders have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from the selling stockholders, the number of shares of common stock set forth opposite its name below.

Underwriters	Number of Shares
Morgan Stanley & Co. LLC	
BofA Securities, Inc.	
Goldman Sachs & Co. LLC	
Jefferies LLC	
Robert W. Baird & Co. Incorporated	
Cowen and Company, LLC	
William Blair & Company, L.L.C.	
Telsey Advisory Group LLC	
Total	8,000,000

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

We and the selling stockholders have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representatives have advised us and the selling stockholders that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to the selling stockholders. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares from the selling stockholders.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to the selling stockholders	$	$	$

The expenses of the offering, not including the underwriting discount, are estimated at $6.0 million and are payable by us.

Option to Purchase Additional Shares

The selling stockholders have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to 1,200,000 additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase from the selling stockholders a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

No Sales of Similar Securities

In connection with the IPO, we have agreed that for 180 days after the date of this prospectus without first obtaining the written consent of the representatives, we will not, and will not publicly disclose an intention to, without the prior written consent of the representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock or file or confidentially submit any registration statement under the Securities Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of common stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of common stock or other securities, in cash or otherwise (other than (a) the shares of common stock to be sold pursuant to the underwriting agreement, (b) any shares of common stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date of the underwriting agreement and described herein, (c) any shares of common stock or restricted stock awards issued or options to purchase common stock granted pursuant to existing employee benefit plans of the Company described herein, (d) any shares of common stock or restricted stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan described herein, (e) the filing by the Company of a registration statement on Form S-8 covering the registration of any shares of common stock or other securities issued under existing employee benefits plan of the Company described herein, (f) the issuance of shares of common stock in connection with the acquisition by the Company or any of its subsidiaries of the securities, business, property or other assets of another person or business entity or pursuant to any employee benefit plan assumed by the Company in connection with such acquisition or (g) the issuance of shares of common stock, of restricted stock or of options to purchase shares of common stock, in each case, in connection with joint ventures, commercial relationships or other strategic transactions; provided, that the aggregate number of shares of common stock that the Company may sell or issue or agree to sell or issue pursuant to this clause (g) does not exceed 10.0% of the total number of shares of common stock issued and outstanding immediately following the completion of this offering; and provided, further, that all such recipients of shares of common stock shall execute and deliver to the representatives, on or prior to such issuance, a lock-up letter as described in the underwriting agreement).

In addition, in connection with our IPO, the selling stockholders, our executive officers and directors and certain of our other existing security holders (collectively, the "Lock-Up Parties" have agreed that for 180 days after the date of this prospectus (the "Lock-Up Period") without first obtaining the written consent of the representatives. Specifically, the Lock-Up Parties have agreed not to directly or indirectly: (i) offer, pledge, sell or contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant or otherwise transfer or dispose of, any common stock or any securities convertible into or exercisable or exchangeable for common stock, whether now owned or hereafter acquired by the lock-up party or with respect to which the Lock-Up Party has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"); (ii) exercise any right with respect to the registration of any of the Lock-Up Securities, or file or confidentially submit or cause to be filed or confidentially submitted any registration statement in connection therewith, under the Securities Act; or (iii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of common stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, and subject to the conditions below, the Lock-Up Parties may transfer the Lock-Up Securities without the prior written consent of the representatives, provided that (1) in the case of clauses (i) through (vi) below the representatives receive a signed lock-up agreement for the balance of the Lock-Up Period from each donee, trustee, distributee, or transferee, as the case may be, (2) any such transfer shall not involve a public market disposition for value (other than pursuant to clause (vii)), (3) such transfers, other than with respect to clauses (iii), (vii) or (viii), are not required to be reported with the SEC on Form 4 in accordance with Section 16 of the Exchange Act, other than any required on Form 5; provided that with respect to this clause (3), any required filing under the Exchange Act shall include a footnote disclosure explaining the nature of, and reason for, such disposition, and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

i. as a bona fide gift or gifts or as charitable contributions;

ii. to (a) any immediate family member, (b) any trust for the direct or indirect benefit of the Lock-Up Party or the immediate family of the Lock-Up Party or any of their successors upon death, (c) any partnership or limited liability company the partners or members of which consist of the Lock-Up Party and one or more members of the Lock-Up Party's immediate family (for purposes of the lock-up agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin);

iii. as a distribution to limited or general partners, members, affiliates or stockholders of the Lock-Up Party;

iv. to the Lock-Up Party's affiliates or to any investment fund or other entity controlled, under common control or managed by the Lock-Up Party;

v. if the Lock-Up Party is a trust, to the beneficiary of such trust;

vi. by operation of law, such as pursuant to a qualified domestic relations order (including a divorce settlement, divorce decree or separation agreement), or by testate succession or intestate succession;

vii. pursuant to the underwriting agreement, including any reclassification, conversion or exchange as part of the Reorganization in connection with such sale of Lock-Up Securities;

viii. to the Company for the primary purposes of satisfying the exercise price on any tax or other governmental withholding obligation with respect to the Lock-Up Securities issued upon the exercise of an option or warrant (or upon the exchange of another security or securities), or issued under an employee equity or benefit plan described in the Registration Statement, in each case on a "cashless" or "net exercise basis;"

ix. to the Company in connection with the repurchase by the Company from the undersigned of shares of common stock pursuant to a repurchase right arising upon the termination of the undersigned's employment with the Company; or

x. with the prior written consent of the representatives on behalf of the underwriters.

Furthermore, the foregoing restrictions shall not apply to (i) dispositions of shares of common Stock of the company purchased by the Lock-Up Party on the open market following the IPO if and only if (a) such sales are not required to be reported in any public report or filing with the SEC, or otherwise and (b) the Lock-Up Party does not otherwise voluntarily effect any public filing or report regarding such sales, (ii) the exercise of stock options granted pursuant to the Company's equity incentive plans described herein; provided that the foregoing restrictions shall apply to any and all of the Lock-Up Securities issued upon such exercise, (iii) the establishment of any contract, instruction or plan (a "Plan") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; provided that no sales of the Lock-Up Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period; provided further that (a) no public announcement of the establishment or the existence of such Plan, and no report in any public report or any filing with the SEC, or otherwise, shall be required and (b) no such public announcement, report or filing shall be made voluntarily and

(iv) transfers, sales, tenders or other dispositions of the Lock-Up Securities occurring after the IPO to a bona fide third party pursuant to a tender offer for securities of the Company or any other transaction, including, without limitation, a merger, consolidation or other business combination approved by the board of directors of the Company involving a change of control of the Company (including, without limitation, entering into any lock-up, voting or similar agreement pursuant to which the Lock-Up Party may agree to transfer, sell, tender or otherwise dispose of the Lock-Up Securities in connection with any such transaction, or vote any of the Lock-Up Securities in favor of any such transaction); provided, that all of the Lock-Up Securities subject to the lock-up agreement remain subject to this lock-up agreement; and provided, further, that it shall be a condition of transfer, sale, tender or other disposition that if such tender offer or other transaction is not completed, any of the Lock-Up Securities subject to the lock-up agreement shall remain subject to the restrictions therein.

In the case of our officers and directors, (i) the representatives have agreed that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of common stock, the representatives will notify us of the impending release or waiver, and (ii) we have agreed in the underwriting agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the representatives under the lock-up agreement to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration or to an immediate family member as defined in FINRA Rule 5130(i)(5) and (b) the transferee has agreed in writing to be bound by the same terms described in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

Listing

We expect the shares to be approved for listing on the NYSE under the symbol “CURV.” In order to meet the requirements for listing on that exchange, the underwriters have undertaken to sell a minimum number of shares to a minimum number of beneficial owners as required by that exchange.

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations among the selling stockholders and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us;
- our financial information;
- the history of, and the prospects for, our Company and the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future net sales;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

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

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

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the NYSE , in the over-the-counter market or otherwise.

Neither we, the selling stockholders nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Distribution

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services.

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have

received, or may in the future receive, customary fees and commissions for these transactions. Certain of the underwriters or their affiliates are agents, lenders and arrangers under the Amended ABL Facility.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Selling Restrictions

European Economic Area

In relation to each Member State of the European Economic Area (each an "EEA State"), no shares have been offered or will be offered pursuant to the offering to the public in that EEA State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that EEA State or, where appropriate, approved in another EEA State and notified to the competent authority in that EEA State, all in accordance with the EU Prospectus Regulation, except that it may make an offer to the public in that EEA State of any shares at any time under the following exemptions under the EU Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the EU Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the EU Prospectus Regulation), subject to obtaining the prior consent of representatives for any such offer; or

(c) in any other circumstances falling within Article 1(4) of the EU Prospectus Regulation, provided that no such offer of the shares shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the EU Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the EU Prospectus Regulation. For the purposes of this provision, the expression an "offer to the public" in relation to the shares in any EEA State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "EU (Prospectus Regulation" means Regulation (EU) 2017/1129.

Notice to Prospective Investors in the United Kingdom

In relation to the United Kingdom, no shares have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority in accordance with the UK Prospectus Regulation, except that it may make an offer to the public in the United Kingdom of any shares at any time under the following exemptions under the UK Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the UK Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the UK Prospectus Regulation), subject to obtaining the prior consent of representatives for any such offer; or

(c) in any other circumstances falling within Article 1(4) of the UK Prospectus Regulation, provided that no such offer of the shares shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

In the United Kingdom, the offering is only addressed to, and is directed only at, "qualified investors" within the meaning of Article 2(e) of the UK Prospectus Regulation, who are also (i) persons having professional

experience in matters relating to investments who fall within the definition of "investment professionals" in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order"); (ii) high net worth bodies corporate, unincorporated associations and partnerships and trustees of high value trusts as described in Article 49(2) of the Order; or (iii) persons to whom it may otherwise lawfully be communicated (all such persons being referred to as "relevant persons"). This prospectus must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this prospectus relates is available only to relevant persons and will be engaged in only with relevant persons.

For the purposes of this provision, the expression an "offer to the public" in relation to the shares in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offering and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "UK Prospectus Regulation" means the UK version of Regulation (EU) No 2017/1129 as amended by The Prospectus (Amendment etc.) (EU Exit) Regulations 2019, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Notice to Prospective Investors in Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission ("ASIC"), in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Notice to Prospective Investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

Notice to Prospective Investors in Japan

The shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, will not be offered or sold, directly or indirectly, in Japan, or for the benefit of any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person, except in compliance with all applicable laws, regulations and ministerial guidelines promulgated by relevant Japanese governmental or regulatory authorities in effect at the relevant time. For the purposes of this paragraph, "Japanese Person" shall mean any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the

SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(a) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(b) where no consideration is or will be given for the transfer;

(c) where the transfer is by operation of law;

(d) as specified in Section 276(7) of the SFA; or

(e) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

Singapore SFA Product Classification—In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of shares of our common stock, we have determined, and hereby notify, all relevant persons (as defined in Section 309A(1) of the SFA), that shares of our common stock are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Notice to Prospective Investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Kirkland & Ellis LLP, New York, New York. Kirkland & Ellis LLP represents entities affiliated with Sycamore in connection with legal matters. Certain legal matters will be passed upon for the underwriters by Latham & Watkins LLP, New York, New York.

EXPERTS

The financial statements for Torrid Holdings Inc. as of February 1, 2020 and January 30, 2021 and for the year ended January 30, 2021 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements for Torrid Parent Inc. as of February 1, 2020 and January 30, 2021 and for each of the three years in the period ended January 30, 2021 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. The registration statement, including the attached exhibits, contains additional relevant information about us and our common stock. The rules and regulations of the SEC allow us to omit from this document certain information included in the registration statement.

The SEC maintains a website that contains reports, proxy statements and other information about issuers, like us, who file electronically with the SEC. The address of that website is http://www.sec.gov. This reference to the SEC's website is an inactive textual reference only and is not a hyperlink.

Upon completion of this offering, we will become subject to the reporting, proxy and information requirements of the Exchange Act, and as a result will be required to file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the website of the SEC referred to above, as well as on our website, www.torrid.com. This reference to our website is an inactive textual reference only and is not a hyperlink. The contents of our website are not part of this prospectus, and you should not consider the contents of our website in making an investment decision with respect to our common stock.

We intend to furnish our stockholders with annual reports containing audited financial statements and make available to our stockholders quarterly reports for the first three quarters of each fiscal year containing unaudited interim financial information.

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(A) There has been nominal activity for Torrid Holdings Inc. subsequent to January 30, 2021. As a result, the unaudited condensed financial statements as of and for the three months ended May 1, 2021 and May 2, 2020 have not been included herein.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholder of Torrid Holdings Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Torrid Holdings Inc. (the "Company") as of January 30, 2021 and February 1, 2020, and the related statements of operations, of stockholder's deficit and of cash flows for the year ended January 30, 2021, including the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of January 30, 2021 and February 1, 2020, and the results of its operations and its cash flows for the year ended January 30, 2021 in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

Los Angeles, California
April 9, 2021, except for the effects of the stock split discussed in Note 7 to the financial statements, as to which the date is June 23, 2021

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

TORRID HOLDINGS INC.
BALANCE SHEETS

	February 1, 2020	January 30, 2021
Assets		
Current assets:		
Cash and cash equivalents	$ —	$ 10
Total assets	$ —	$ 10
Liabilities		
Current liabilities:		
Due to related parties	$ —	$ 5,000
Total liabilities	$ —	$ 5,000
Commitments and contingencies (Note 6)		
Stockholder's deficit		
Common shares: $0.01 par value; 1,000,000,000 shares authorized; 0 shares issued and outstanding at February 1, 2020; 110,000,000 shares issued and outstanding at January 30, 2021	$ —	$ 1,100,000
Accumulated deficit	—	(1,104,990)
Total stockholder's deficit	—	(4,990)
Total liabilities and stockholder's deficit	$ —	$ 10

The accompanying notes are an integral part of these financial statements.

TORRID HOLDINGS INC.
STATEMENT OF OPERATIONS

	Fiscal Year Ended January 30, 2021
Selling, general and administrative expenses	$ 5,000
Loss from operations	(5,000)
Provision for income taxes	—
Net loss	$ (5,000)
Net loss per share:	
Basic and diluted	$ (0)
Weighted average number of shares:	
Basic and diluted	110,000,000

The accompanying notes are an integral part of these financial statements.

TORRID HOLDINGS INC.
STATEMENT OF STOCKHOLDER'S DEFICIT

	Shares	Amount	Accumulated Deficit	Total Stockholder's Deficit
Balance at February 1, 2020	—	$ —	$ —	$ —
Issuance of common shares	110,000,000	1,100,000	(1,099,990)	10
Net loss	—	—	(5,000)	(5,000)
Balance at January 30, 2021	110,000,000	$1,100,000	$(1,104,990)	$ (4,990)

The accompanying notes are an integral part of these financial statements.

TORRID HOLDINGS INC.
STATEMENT OF CASH FLOWS

	Fiscal Year Ended January 30, 2021
OPERATING ACTIVITIES	
Net loss	$ (5,000)
Changes in operating liabilities	
Due to related parties	5,000
Net cash provided by operating activities	—
INVESTING ACTIVITIES	
Net cash provided by investing activities	—
FINANCING ACTIVITIES	
Issuance of common shares	10
Net cash provided by financing activities	10
Increase in cash and cash equivalents	10
Cash and cash equivalents at beginning of period	—
Cash and cash equivalents at end of period	$ 10

The accompanying notes are an integral part of these financial statements.

TORRID HOLDINGS INC.
NOTES TO FINANCIAL STATEMENTS

Note 1. Basis of Presentation

Torrid Holdings Inc. is a Delaware corporation formed on October 29, 2019 and capitalized on February 20, 2020. Torrid Holdings Inc. is a wholly owned subsidiary of Torrid Holding LLC, which is majority-owned by investment funds managed by Sycamore Partners Management, L.P. Pursuant to a reorganization into a holding company structure whereby Torrid Holding LLC will contribute its issued and outstanding equity interests in Torrid Parent Inc. and its related party promissory notes due to Torrid Parent Inc. to Torrid Holdings Inc., Torrid Holdings Inc. will be a holding company and its principal asset will be a controlling equity interest in Torrid Parent Inc. As the sole shareholder of Torrid Parent Inc., Torrid Holdings Inc. will operate and control all of the business and affairs of Torrid Parent Inc., and through Torrid Parent Inc. and its subsidiaries, conduct its business.

Basis of Presentation

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Statements of operations, changes in stockholder's deficit and cash flows have not been presented for any period prior to February 1, 2020 because Torrid Holdings Inc. did not engage in any business or other activities during this period, except in connection with its formation.

The financial statements of Torrid Holdings Inc. have been prepared on the basis that it is able to continue as a going concern. Torrid Holdings Inc. was established with nominal working capital. To the extent it requires funds to operate the business, Torrid Holding LLC has provided a letter of support that unconditionally and irrevocably commits to funding the liabilities of Torrid Holdings Inc. as and when needed for capital needs up to a maximum of $25,000. Torrid Holdings Inc. believes it is probable that its plans will be effectively implemented within one year from the date the financial statements are issued and when implemented will mitigate the relevant conditions or events that raise substantial doubt about Torrid Holdings Inc.'s ability to continue as a going concern.

Fiscal Year

Torrid Holdings Inc.'s fiscal year ends on the Saturday nearest to January 31 and each fiscal year is generally comprised of four 13-week quarters (although in years with 53 weeks, the fourth quarter is comprised of 14 weeks). Fiscal years are identified according to the calendar year in which they begin. For example, fiscal year 2020 refers to the fiscal year ended January 30, 2021.

Note 2. Summary of Significant Accounting Policies

Cash and Cash Equivalents

Torrid Holdings Inc. considers all highly liquid investments with maturities of less than three months when purchased to be cash equivalents. All cash and cash equivalents as of January 30, 2021 was cash on hand held in deposit, and is carried at fair value, which approximates carrying value.

Note 3. Stockholder's Deficit

Torrid Holdings Inc. was formed on October 29, 2019 and is authorized to issue 1.0 billion shares of common stock at $0.01 par value. Torrid Holdings Inc. had 110.0 million shares of common stock issued and outstanding as of January 30, 2021.

Note 4. Related Party Transactions

During fiscal year 2020, certain expenses were paid by a related party on behalf of Torrid Parent Inc.

Note 5. Income Taxes

Torrid Holdings Inc. generated a net operating loss ("NOL") for the fiscal year 2020 and as a result, no provision for or benefit from income taxes was recognized in the statement of operations. NOLs may be carried forward indefinitely and represent a deferred tax asset. A valuation allowance has been established for the NOL carryforward as its use is dependent on the generation of sufficient future taxable income to realize the future benefit, which is not more likely than not as of the end of fiscal year 2020.

Our deferred tax assets are as follows:

	February 1, 2020	January 30, 2021
Net operating loss carryforward	$ —	$ 5,000
Valuation allowance	—	(5,000)
Net deferred tax assets	$	$ —

A reconciliation of the effective income tax rate to the statutory tax rate is as follows:

	Fiscal Year Ended January 30, 2021
Statutory federal rate	21.0%
Valuation allowance	(21.0%)
Effective income tax rate	0.0%

Note 6. Commitments and Contingencies

Other than the reorganization described in Note 1, Torrid Holdings Inc. has no commitments or contingencies.

Note 7. Subsequent Events

Subsequent events were evaluated through April 9, 2021, the date that these financial statements were available to be issued.

In connection with the reissuance of the financial statements, subsequent events were evaluated through June 23, 2021, the date the financial statements were available to be reissued.

On June 22, 2021, Torrid Holdings Inc.'s stockholder approved an amendment to Torrid Holdings Inc.'s certificate of incorporation to (i) effect a 110,000-for-1 stock split of all shares of the issued and outstanding common stock, which was effected on June 22, 2021 and (ii) authorize 5.0 million shares of preferred stock. All share and per-share data in the financial statements and notes to the financial statements has been retroactively adjusted to reflect the stock split for all periods presented. The par value of the common stock was not adjusted as a result of the stock split.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholder of Torrid Parent Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Torrid Parent Inc. and its subsidiaries (the "Company") as of January 30, 2021 and February 1, 2020, and the related consolidated statements of operations and comprehensive income, of stockholder's equity (deficit) and of cash flows for each of the three years in the period ended January 30, 2021, including the related notes and financial statement schedule listed in the accompanying index as of January 30, 2021 and February 1, 2020 and for the years then ended (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of January 30, 2021 and February 1, 2020, and the results of its operations and its cash flows for each of the three years in the period ended January 30, 2021 in conformity with accounting principles generally accepted in the United States of America.

Changes in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in fiscal 2019 and the manner in which it accounts for revenue from contracts with customers in fiscal 2018.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

Los Angeles, California
April 9, 2021

We have served as the Company's auditor since 2015.

TORRID PARENT INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	February 1, 2020	January 30, 2021
Assets		
Current assets:		
Cash and cash equivalents	$ 28,804	$ 122,953
Restricted cash	195	262
Inventory	119,705	105,843
Prepaid expenses and other current assets	15,309	13,085
Total current assets	164,013	242,143
Property and equipment, net	169,445	143,256
Operating lease right-of-use assets	287,413	244,711
Deposits and other noncurrent assets	2,903	3,560
Deferred tax assets	3,814	6,139
Intangible asset	8,400	8,400
Total assets	$ 635,988	$ 648,209
Liabilities and stockholder's deficit		
Current liabilities:		
Accounts payable	$ 35,946	$ 70,853
Accrued and other current liabilities	92,953	110,361
Operating lease liabilities	38,396	50,998
Current portion of term loan	9,030	11,506
Due to related parties	8,316	8,055
Income taxes payable	1,942	9,336
Total current liabilities	186,583	261,109
Noncurrent operating lease liabilities	295,868	246,458
Term loan	240,393	193,406
Deferred compensation	5,215	6,531
Lease incentives and other noncurrent liabilities	3,427	3,873
Total liabilities	731,486	711,377
Commitments and contingencies (Note 16)		
Stockholder's deficit:		
Common shares: $0.01 par value; 1,000 shares authorized; 1,000 shares issued and outstanding at February 1, 2020 and January 30, 2021	—	—
Additional paid-in capital	2,535	10,326
Accumulated deficit	(98,023)	(73,486)
Accumulated other comprehensive loss	(10)	(8)
Total stockholder's deficit	(95,498)	(63,168)
Total liabilities and stockholder's deficit	$ 635,988	$ 648,209

The accompanying notes are an integral part of these consolidated financial statements.

TORRID PARENT INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME
(In thousands, except share data)

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Net sales	$ 909,147	$1,036,984	$ 973,514
Cost of goods sold	586,121	640,909	643,215
Gross profit	323,026	396,075	330,299
Selling, general and administrative expenses	170,530	253,378	222,093
Marketing expenses	48,774	65,704	51,382
Income from operations	103,722	76,993	56,824
Interest expense	1,053	16,493	21,338
Interest income, net of other (income) expense	(85)	(202)	(42)
Income before provision for income taxes	102,754	60,702	35,528
Provision for income taxes	16,042	18,833	10,991
Net income	$ 86,712	$ 41,869	$ 24,537
Comprehensive income:			
Net income	$ 86,712	$ 41,869	$ 24,537
Other comprehensive (loss) income:			
Foreign currency translation adjustment	(134)	(29)	2
Total other comprehensive (loss) income	(134)	(29)	2
Comprehensive income	$ 86,578	$ 41,840	$ 24,539
Net earnings per share:			
Basic and diluted	$ 87	$ 42	$ 25
Weighted average number of shares:			
Basic and diluted	1,000	1,000	1,000

The accompanying notes are an integral part of these consolidated financial statements.

TORRID PARENT INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDER'S EQUITY (DEFICIT)
(In thousands, except share data)

	Common Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholder's Equity (Deficit)
	Shares	Amount				
Balance at February 3, 2018	1,000	$ 10	$ 365,278	$ (227,613)	$ 153	$ 137,818
Impact of adoption of ASC 606, net of tax	—	—	—	1,009	—	1,009
Net income	—	—	—	86,712	—	86,712
Capital distribution to Torrid Holding LLC for incentive units	—	—	(38,308)	—	—	(38,308)
Capital distribution to Torrid Holding LLC, net of contribution	—	—	(60,675)	—	—	(60,675)
Other comprehensive loss	—	—	—	—	(134)	(134)
Balance at February 2, 2019	1,000	10	266,295	(139,892)	19	126,422
Net income	—	—	—	41,869	—	41,869
Related party IT asset purchase, net of tax	—	—	(19,336)	—	—	(19,336)
Capital contribution from Torrid Holding LLC for incentive units	—	—	11,993	—	—	11,993
Capital distribution to Torrid Holding LLC	—	—	(256,417)	—	—	(256,417)
Other comprehensive loss	—	—	—	—	(29)	(29)
Balance at February 1, 2020	1,000	10	2,535	(98,023)	(10)	(95,498)
Net income	—	—	—	24,537	—	24,537
Capital contribution from Torrid Holding LLC for incentive units	—	—	7,791	—	—	7,791
Other comprehensive income	—	—	—	—	2	2
Balance at January 30, 2021	1,000	$ 10	$ 10,326	$ (73,486)	$ (8)	$ (63,168)

The accompanying notes are an integral part of these consolidated financial statements.

TORRID PARENT INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
OPERATING ACTIVITIES			
Net income	$ 86,712	$ 41,869	$ 24,537
Adjustments to reconcile net income to net cash provided by operating activities:			
Write down of inventory	8,079	3,828	6,099
Operating right-of-use assets amortization	—	40,427	40,316
Depreciation and other amortization	26,977	31,173	34,579
Share-based compensation	(38,308)	11,993	7,791
Deferred taxes	3,361	(4,661)	(2,325)
Other	679	(1,031)	(1,226)
Changes in operating assets and liabilities:			
Inventory	9,689	(17,405)	7,880
Prepaid expenses and other current assets	1,808	5,200	2,594
Deposits and other noncurrent assets	(1,297)	(522)	(749)
Accounts payable	4,541	5,314	37,849
Accrued and other current liabilities	8,128	28,009	19,748
Operating lease liabilities	—	(41,651)	(33,895)
Lease incentives and other noncurrent liabilities	2,912	(45)	544
Deferred compensation	298	1,064	1,316
Due to related parties	1,666	(4,435)	(631)
Income taxes payable	(153)	(37)	7,394
Net cash provided by operating activities	115,092	99,090	151,821
INVESTING ACTIVITIES			
Purchases of property and equipment	(40,507)	(26,333)	(11,570)
Purchase of Hot Topic IT assets	—	(29,548)	—
Deficit of insurance proceeds received for damage to property and equipment	—	(239)	—
Net cash used in investing activities	(40,507)	(56,120)	(11,570)
FINANCING ACTIVITIES			
Principal payments on related party promissory note	(15,311)	—	—
Proceeds from revolving credit facility	182,495	103,120	50,700
Payments on revolving credit facility	(179,350)	(118,600)	(50,700)
Proceeds from term loan, net of original issue discount and deferred financing costs	—	252,462	(525)
Principal payments on term loan	—	(3,900)	(45,400)
Capital distribution to Torrid Holding LLC, net of contribution	(60,675)	(256,417)	—
Net cash used in financing activities	(72,841)	(23,335)	(45,925)
Effect of foreign currency exchange rate changes on cash, cash equivalents and restricted cash	(63)	(11)	(110)
Increase in cash, cash equivalents and restricted cash	1,681	19,624	94,216
Cash, cash equivalents and restricted cash at beginning of period	7,694	9,375	28,999
Cash, cash equivalents and restricted cash at end of period	$ 9,375	$ 28,999	$ 123,215
SUPPLEMENTAL INFORMATION			
Cash paid during the period for interest related to the revolving credit facility and term loan	$ 851	$ 10,607	$ 21,258
Cash paid during the period for income taxes	$ 8,088	$ 22,413	$ 3,921
SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES			
Property and equipment purchases included in accounts payable and accrued liabilities	$ 3,719	$ 5,580	$ 1,238
Related party promissory note receivable in exchange for HT Intermediate Holdings Corp. preferred stock	$ —	$ 214,628	$ —

The accompanying notes are an integral part of these consolidated financial statements.

TORRID PARENT INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Basis of Presentation and Description of the Business

Corporate Structure

Torrid Parent Inc. is a Delaware corporation formed on June 4, 2019. Torrid Parent Inc. is a wholly owned subsidiary of Torrid Holding LLC, or parent, which is majority-owned by investment funds managed by Sycamore Partners Management, L.P. ("Sycamore"). Torrid Intermediate LLC, formerly known as Torrid Inc., is a Delaware limited liability company formed on June 18, 2019 and a wholly owned subsidiary of Torrid Parent Inc. Torrid LLC is a wholly owned subsidiary of Torrid Intermediate LLC.

Sale of Torrid LLC's Issued and Outstanding Equity Interests to Torrid Inc.

On May 1, 2015, Hot Topic Inc. ("Hot Topic"), an entity under the common control of Sycamore, entered into a contribution agreement pursuant to which Hot Topic contributed all of the existing assets and liabilities related to its former business (that operated under the name 'Torrid') to a newly-formed, separate and wholly-owned subsidiary of Hot Topic, Torrid LLC. Immediately thereafter, on May 1, 2015, Hot Topic entered into a purchase agreement with Torrid Inc., pursuant to which Hot Topic sold all of its issued and outstanding equity interests in Torrid LLC to Torrid Inc. for cash consideration of $55.0 million. This acquisition was accounted for in accordance with subsections of Accounting Standards Codification ("ASC") 805-50, *Business Combinations* ("ASC 805-50"), related to transactions between entities under common control. In connection with the separation and purchase transaction, Torrid Inc. entered into a transition services agreement with Hot Topic. This transition services agreement and subsequent amendments are further discussed in "Note 11—Related Party Transactions." This transaction is referred to herein as the "Separation."

Contribution of Torrid Inc.'s Issued and Outstanding Equity Interests to Torrid Parent Inc.

On June 14, 2019, before Torrid Inc. became Torrid Intermediate LLC, Torrid Holding LLC, Torrid Inc.'s then-parent, entered into a contribution agreement ("Contribution Agreement") with Torrid Parent Inc. Pursuant to the Contribution Agreement, Torrid Holding LLC contributed, assigned, transferred and delivered its issued and outstanding equity interests in Torrid Inc. to Torrid Parent Inc. As a result, Torrid Inc. ceased to be a wholly owned subsidiary of Torrid Holding LLC and became a wholly owned subsidiary of Torrid Parent Inc. The Contribution Agreement was accounted for in accordance with ASC 805-50. Consequently, the equity interests of Torrid Inc. contributed by Torrid Holding LLC to Torrid Parent Inc. were recorded at its historical carrying amounts. The contribution of Torrid Inc.'s issued and outstanding equity interests to Torrid Parent Inc. resulted in an increase in the number of shares outstanding from one to 1,000. Stockholder's deficit is retrospectively presented for all periods using the capital structure of Torrid Parent Inc.

Conversion of Torrid Inc. to a Limited Liability Company

On June 18, 2019, Torrid Inc. was converted from a corporation into a limited liability company called Torrid Intermediate LLC.

Throughout these financial statements, with the exception of references to Hot Topic's former business, the terms "Torrid," "we," "us," "our," the "Company" and similar references refer to Torrid Inc. and its consolidated subsidiaries for the periods prior to the formation of Torrid Parent Inc. on June 4, 2019, and refer to Torrid Parent Inc. and its consolidated subsidiaries for the periods on and after the formation of Torrid Parent Inc.

Fiscal Year

Our fiscal year ends on the Saturday nearest to January 31 and each fiscal year is generally comprised of four 13-week quarters (although in years with 53 weeks, the fourth quarter is comprised of 14 weeks). Fiscal

years 2018, 2019 and 2020 are 52-week years. Fiscal years are identified according to the calendar year in which they begin. For example, references to "fiscal year 2020" or similar references refer to the fiscal year ended January 30, 2021.

Description of Business

We are a direct-to-consumer brand of apparel, intimates and accessories targeting the 25- to 40-year old woman who is curvy and wears sizes 10 to 30. We generate revenues primarily through our e-Commerce platform www.torrid.com and our stores in the United States of America, Puerto Rico and Canada.

COVID-19

In March 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic, which continues to spread throughout the United States and globally. The COVID-19 health crisis poses significant and widespread risks to our business as well as to the business environment and the markets in which we operate. In response to the public health crisis posed by COVID-19, individual states across the United States, including California where our headquarters are located, imposed a variety of regulatory restrictions including stay-at-home requirements. Consequently, we temporarily closed our headquarters and all retail store locations on March 17, 2020. On May 15, 2020, we began to reopen our retail store locations in phases. As of August 1, 2020, all of our retail store locations impacted by COVID-19 had reopened subject to local and state restrictions including limited hours and curbside order pick-up for certain locations. While our retail store locations were closed, we continued to serve customers virtually through our Torrid app and online at www.torrid.com. Our business operations, including net sales, were substantially affected by COVID-19 and there is continued uncertainty regarding the manner and timing in which we can return some or all of our business to more normal business operations. In addition to our planned closures and reopenings, we have had to unexpectedly close some of our physical locations for brief periods of time in response to COVID-19 exposures. We may face new closure requirements with respect to some or all of our physical locations for prolonged periods of time due to, among other factors, evolving federal, state and local restrictions and shelter-in-place orders. Even though we have reopened our physical locations, changes in consumer behavior and health concerns may continue to impact customer traffic at our retail locations and may make it more difficult for us to staff these locations. As a result of these developments, we experienced an unfavorable impact on our sales, results of operations and cash flows in fiscal year 2020.

In response to the impact of COVID-19, in March 2020, we began to implement a number of precautionary measures to minimize cash outlays, some of which have since been lifted. These precautionary measures include managing workforce costs, delaying planned capital expenditures, including store openings, minimizing discretionary expenses and deferring lease payments while we negotiate concessions for certain of our retail locations. Please refer to "Note 9 – Leases" for further discussion regarding these lease concessions.

We have historically relied on cash flows from operations as well as borrowings under credit facilities as primary sources of liquidity. Our borrowings under the Amended Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") are subject to a financial covenant based upon our Total Net Leverage Ratio (as defined in "Note 12—Debt Financing Arrangements") with a maximum ratio of 2.50 for the quarter ended January 30, 2021, 2.35 for the quarter ending May 1, 2021, 2.10 for the quarters ending July 31, 2021 and October 30, 2021 and 1.85 for all quarters thereafter. As of January 30, 2021, we were compliant with this financial covenant. We believe expected net income plus interest expense, interest income, net of other (income) expense, provision for income taxes, and depreciation and amortization ("EBITDA") from operations combined with a letter of support from Sycamore (further discussed in "Note 11—Related Party Transactions") will be sufficient to meet all of our financial covenants in the Amended Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") through April 2022 (approximately twelve months from the date these financial statements were available to be issued) as long as we are able to generate sufficient EBITDA from operations assumed in our forecast.

As of January 30, 2021, our existing cash and cash equivalents on-hand were $123.0 million and our availability under the Existing ABL Facility, as amended (as defined in "Note 12—Debt Financing Arrangements"), was $65.5 million, which reflects no borrowings.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was signed into law, and has resulted in significant changes to the U.S. federal corporate tax law. The CARES Act provides numerous tax provisions and other stimulus measures, including temporary changes regarding the prior and future utilization of net operating losses, temporary changes to the prior and future limitations on interest deductions, temporary suspension of certain payment requirements for the employer portion of Social Security taxes, technical corrections from prior tax legislation for tax depreciation of certain qualified improvement property, and the creation of certain refundable employee retention credits. Additionally, several state and foreign jurisdictions have enacted additional legislation to comply with federal changes. On December 27, 2020, the Consolidated Appropriations Act ("CAA") was enacted in further response to the COVID-19 pandemic. The CAA, among other things, revises certain tax measures enacted under the CARES Act, such as the deductibility of payroll tax credits, charitable contributions for corporate taxpayers, certain meals and entertainment expenses paid or incurred in calendar years 2021 and 2022, and employment retention credit claims. On March 11, 2021, subsequent to the end of fiscal year 2020, the American Rescue Plan Act ("ARPA") was signed into law with additional funding for COVID-19 pandemic relief. The ARPA includes the expansion of employment retention credit claims and other pandemic funding provisions. We have considered the applicable CARES Act and CAA tax law changes in our tax provision for the year ended January 30, 2021, and continue to evaluate the impact of these and the ARPA tax law changes on future periods.

Note 2. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying audited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The consolidated financial statements include our accounts and those of our wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

Segment Reporting

We have determined that we have one reportable segment, which includes the operation of our e-Commerce platform and stores. The single segment was identified based on how the Chief Operating Decision Maker, who we have determined to be our Chief Executive Officer, manages and evaluates performance and allocates resources. Revenues and long-lived assets related to our operations in Canada and Puerto Rico during fiscal years 2018, 2019 and 2020 and as of the end of the same periods were not material, and therefore, are not reported separately from domestic revenues and long-lived assets.

Use of Estimates

We are required to make certain estimates and assumptions in order to prepare consolidated financial statements in conformity with GAAP. Such estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses and disclosure of contingent assets and liabilities in the consolidated financial statements and accompanying notes. Our most significant estimates include, but are not limited to, the valuation of inventory balances, the determination of sales returns, the assessments related to the valuation of long-lived assets for impairment, the determination of incremental borrowing rates used to value our operating lease liabilities, estimates related to our loyalty program, the recoverability of deferred taxes, the determination of uncertain tax positions, the valuation of incentive units and the determination of gift card breakage. The estimation process required to prepare our consolidated financial statements requires assumptions to be made about future events and conditions, and as such, is inherently subjective and uncertain. Our actual results could differ materially from those estimates.

Concentration Risks

We consider all highly liquid investments with maturities of less than three months when purchased to be cash equivalents. All credit and debit card receivable balances are also classified as cash and cash equivalents. As of the end of fiscal years 2019 and 2020, the amounts due from third party financial institutions for these transactions classified as cash and cash equivalents totaled $7.7 million and $7.1 million, respectively. Cash and cash equivalents used primarily for working capital purposes are maintained with various major third party financial institutions in amounts which are in excess of the Federal Deposit Insurance Corporation ("FDIC") insurance limits. We are potentially exposed to a concentration of credit risk when cash and cash equivalent deposits in these financial institutions are in excess of FDIC limits. We consider the credit risk associated with these financial instruments to be minimal as cash and cash equivalents are held by financial institutions with high credit ratings and we have not historically sustained any credit losses associated with our cash and cash equivalents balances.

In addition, no one supplier accounted for more than 10% of total net purchases in fiscal years 2018 and 2019, and one supplier accounted for approximately 14% of total net purchases in fiscal year 2020.

Fair Value of Financial Instruments

We carry certain of our assets and liabilities at fair value in accordance with GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. We consider carrying amounts of cash and cash equivalents and accounts payable to approximate fair value because of the short maturity of these financial instruments. We consider the carrying amounts of the Existing ABL Facility, as amended, (as defined in "Note 12—Debt Financing Arrangements") and the Amended Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") to approximate fair value because of the variable interest rates of the facility and the term loan. See "Note 18—Fair Value Measurements" for more details about how we determine the fair value of our financial instruments.

Inventory

Inventory is valued at the lower of moving average cost or net realizable value. We make certain assumptions regarding net realizable value in order to assess whether our inventory is recorded properly at the lower of cost or net realizable value. These assumptions are based on historical average selling price experience, current selling price information and estimated future selling price information. Physical inventory counts are conducted at least once during the year to determine actual inventory on hand and shrinkage. We accrue our estimated inventory shrinkage for the period between the last physical count and current balance sheet date.

Property and Equipment

Property and equipment are recorded at cost less accumulated depreciation. Major repairs and improvements are capitalized, while routine maintenance and repairs are expensed as incurred. The gross carrying amounts of property and equipment sold or retired and the related accumulated depreciation are eliminated in the year of disposal, and any resulting gains or losses are included in the consolidated statements of operations and comprehensive income. Application and development costs associated with internally developed software such as salaries of employees and payments made to third parties and consultants working on the software development are capitalized. Subsequent additions, modifications or upgrades to internal-use software are capitalized only to the extent that they constitute major enhancements. Capitalized internal-use software costs are amortized using the straight-line method over their estimated useful lives, which are generally three years.

Depreciation expense is calculated using the straight-line method over the following estimated useful lives:

Leasehold improvements	shorter of the 3- to 10-year estimated useful life or the respective lease term
Furniture, fixtures and equipment	2 to 10 years
Software and licenses	3 to 7 years

The carrying value of property and equipment is subject to assessment for potential impairment whenever events or changes in circumstances indicate that an asset's carrying value may not be recoverable, as further described below.

Definite-Lived Assets

We assess the carrying value of long-lived assets for potential impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. We group and evaluate long-lived assets for impairment at the individual store level, which is the lowest level at which individual cash flows can be identified. Factors we consider important that could trigger an impairment review of our stores or e-Commerce operations include significant underperformance relative to expected historical or projected future operating results, a significant change in the manner of the use of the asset or a significant negative industry or economic trend. If we determine the carrying value of long-lived assets may not be recoverable based upon the existence of one or more of the aforementioned factors, we test for the recoverability of the carrying value of our long-lived assets by comparing the carrying value of the asset groups to our estimated undiscounted future net cash flows attributable to the asset groups. If the carrying value of the long-lived assets is greater than the related undiscounted future net cash flows, the long-lived assets are measured for impairment. We measure the impairment by comparing the difference between the long-lived asset's carrying value and the discounted future net cash flows attributable to the long-lived asset, which represent its fair value. We calculate the discounted future net cash flows of a store by netting future estimated sales of each store against estimated cost of goods sold, store occupancy costs and other store operating expenses such as payroll, supplies, repairs and maintenance and credit/debit card fees. Changes in these assumptions may cause the fair value to be significantly impacted. In the event future performance is lower than forecasted results, future cash flows may be lower than expected, which could result in future impairment charges. While we believe that recently opened stores will provide sufficient cash flow, material changes in financial performance could result in future store impairment charges.

Indefinite-Lived Intangible Assets

Indefinite-lived intangible assets are not amortized, but are reviewed for impairment at least annually, or more frequently when events or changes in circumstances indicate the carrying value may not be recoverable. Judgments regarding indicators of potential impairment are based on market conditions and operational performance of the business.

At the end of the third quarter of each fiscal year, we perform an impairment analysis of indefinite-lived intangible assets. We assess our indefinite-lived intangible asset for impairment using a quantitative analysis to determine whether the fair value of the asset is less than its carrying value. If we conclude, based on our assessment, that the asset's fair value is less than its carrying value, then an impairment charge is recorded in the amount of the excess.

Implementation Costs Incurred in Cloud Computing Arrangements that are Service Contracts

Our cloud computing arrangements that are service contracts primarily consist of arrangements with third party vendors for our internal use of their software applications that they host. We defer implementation costs incurred in relation to such arrangements, including costs for software application coding, configuration, integration and customization, while associated process reengineering, training, maintenance and data conversion costs are expensed. Subsequent implementation costs are deferred only to the extent that they constitute major enhancements. The short-term portion of deferred costs are included in prepaid expenses and other current assets in the consolidated balance sheets, while the long-term portion of deferred costs are included in deposits and other noncurrent assets. Amortized implementation costs incurred in cloud computing arrangements that are service contracts are recognized in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income using the straight-line method over three to five years, which generally represents the noncancellable terms of the cloud computing arrangements, plus any optional renewal periods that

we are reasonably certain to exercise. Deferred implementation costs are subject to assessment for potential impairment whenever events or changes in circumstances indicate that the carrying values may not be recoverable.

Loyalty Program

On July 22, 2019, we relaunched our loyalty program, Torrid Rewards, in all our stores and on www.torrid.com. Under this program, customers accumulate points based on purchase activity and qualifying non-purchase activity and upon reaching a certain point level, customers can earn awards that may only be redeemed for merchandise. Unredeemed points typically expire after 13 months without additional purchase and qualifying non-purchase activity and unredeemed awards typically expire 45 days after issuance. We use historical redemption rates to estimate the value of future award redemptions and we recognize the estimated value of these future awards as a reduction of revenue in the consolidated statements of operations and comprehensive income in the period the points are earned by the customer. Prior to the relaunch of the Torrid Rewards loyalty program, we operated our Torrid Insider loyalty program under which customers accumulated points based on purchase activity only. As of the end of fiscal years 2019 and 2020, we had $12.0 million and $12.3 million, respectively, in accrued loyalty program included in accrued and other current liabilities in the consolidated balance sheets. We recorded $1.2 million, $3.1 million and $0.3 million as a reduction of net sales in fiscal years 2018, 2019 and 2020, respectively. Future revisions to the estimated liability may result in changes to net sales.

Self-Insurance

We are self-insured for certain losses related to medical and workers' compensation claims although we maintain stop loss coverage with third party insurers to limit our total liability exposure. In general, our self-insurance reserves are recorded on an undiscounted basis. The estimate of our self-insurance liability involves uncertainty since we must use judgment to estimate the ultimate cost that will be incurred to settle reported claims and unreported claims for incidents incurred but not reported as of the balance sheet date. When estimating our self-insurance liability, we consider a number of factors, which include historical claim experience and valuations provided by independent third party actuaries. While the ultimate amount of claims incurred is dependent on future developments, we believe recorded reserves are adequate to cover the future payment of claims. However, it is possible that recorded reserves may not be adequate to cover the future payment of claims. Adjustments, if any, to estimates recorded resulting from ultimate claim payments will be reflected in our consolidated statements of operations and comprehensive income in the periods in which such adjustments are known.

Comprehensive Income

Comprehensive income includes all changes in equity during a period except those that resulted from investments by, or distributions to, stockholders. Other comprehensive income refers to revenues, expenses, gains and losses that, under GAAP, are included in comprehensive income, but excluded from net income as these amounts are recorded directly as an adjustment to stockholder's equity. Components of our comprehensive income include net income and foreign currency translation adjustments. Foreign currency translation adjustments in fiscal years 2018, 2019 and 2020 were not material.

Foreign Currency Translation

The functional currency for our wholly owned foreign subsidiaries included in these consolidated financial statements that are domiciled outside of the United States is the applicable local currency. Assets and liabilities of our foreign subsidiaries are translated into United States dollars at the exchange rate in effect on the balance sheet date. Revenues and expenses are translated at the average rate in effect during the period. Unrealized translation gains and losses are recorded as a cumulative translation adjustment, which is included in the

consolidated statements of stockholder's equity (deficit) as a component of accumulated other comprehensive income (loss). Adjustments that arise from exchange rate changes on transactions denominated in a currency other than the local currency are included in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income as incurred.

Revenue Recognition

In the first quarter of fiscal year 2018, we adopted Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*, and related amendments ("ASC 606"), using the modified retrospective adoption method. Under the modified retrospective adoption method, our consolidated financial statements as of and for the fiscal year ended February 2, 2019 and thereafter, reflect the provisions of ASC 606.

Under ASC 606, we recognize revenue when our performance obligations under the terms of a contract or an implied arrangement with a customer are satisfied, which is when the merchandise is transferred to the customer and the customer obtains control of it. The amount of revenue we recognize reflects the total consideration we expect to receive for the merchandise, which is the transaction price. For arrangements that contain multiple performance obligations, we allocate the transaction price to each performance obligation on a relative standalone selling price basis.

At our retail store locations, we satisfy our performance obligation and recognize revenue at the point in time when a customer takes possession of the merchandise and tenders payment at the point-of-sale register. For e-Commerce sales shipped to a customer from our distribution center, or from a retail store location (ship from store), we satisfy our performance obligation and recognize revenue upon shipment, which is the point in time we believe the customer obtains control of the merchandise after payment has been tendered. Income we receive from customers for shipping and handling is recognized as a component of revenue upon shipment of merchandise to the customer. We satisfy our performance obligation and recognize revenue from e-Commerce sales shipped to a retail store location from our distribution center, or fulfilled from merchandise already located at a retail store location (buy-online-pickup-in-store), at the point in time when the customer retrieves the merchandise from within the retail store location or at a retail store curbside.

If a customer earns loyalty program points in connection with the retail store or e-Commerce sales transactions described above, then we have a remaining performance obligation and cannot recognize all the revenue. A portion of the revenue is allocated to the loyalty program points earned during the transaction. We satisfy our performance obligation and recognize revenue allocated to these loyalty program points and the resulting awards at the point in time when the awards are redeemed for merchandise, when we determine that they will not be redeemed, or when the awards and points expire.

We satisfy our performance obligation and recognize revenue from gift cards and store merchandise credits at the point in time when the customer presents the gift cards and store merchandise credits for redemption. Gift card breakage is income recognized due to the non-redemption of a portion of gift cards sold by us for which a liability was recorded in prior periods. We recognize estimated gift card breakage over time as a component of net sales in proportion to the pattern of rights exercised by the customer as reflected in actual gift card redemption patterns over the period. Our estimated gift card breakage rate is approximately 4%. While customer redemption patterns result in estimated gift card breakage, changes in our customers' behavior could impact the amount that ultimately is unused and could affect the amount recognized as a component of net sales. During fiscal years 2018, 2019 and 2020, we recognized $0.8 million, $1.1 million and $0.9 million, respectively, of estimated gift card breakage as a component of net sales.

We are required to estimate certain amounts included in a contract or an implied arrangement with a customer which add variability to the transaction price. Under certain conditions, we are obligated to accept customer returns for most of our merchandise. Sales returns reduce the revenue we expect to receive for

merchandise and therefore add variability to the transaction price. Based on historical return pattern experience, we reasonably estimate the amount of merchandise expected to be returned and exclude it from revenue. Similarly, losses we bear arising from uncollectible customer credit card payments are recorded as a reduction of revenue as they reduce the revenue we expect to receive for the merchandise.

We recognize a contract liability when we receive consideration from a customer before our performance obligations under the terms of a contract or an implied arrangement with the customer are satisfied. Consequently, we consider our remaining performance obligations to be representative of our contract liability, most of which is not expected to last for more than one year and has therefore been classified as current. Our contract liability balances increase as gift cards and store merchandise credits are purchased and received by the customer; and as loyalty points are earned based on purchase activity. Contract liability balances decrease as gift cards and store merchandise credits are redeemed for merchandise or when we determine that they will not be redeemed; as loyalty points expire or when we determine that they will not be converted into a loyalty award; and as loyalty awards are redeemed for merchandise or expire.

Sales taxes collected from customers and remitted directly to governmental authorities are not considered revenue and are excluded from the transaction price.

Cost of Goods Sold

Cost of goods sold includes: merchandise costs; freight; inventory shrinkage; payroll expenses associated with the merchandising and distribution departments; distribution center expenses, including rent, common area maintenance ("CAM") charges, real estate taxes, depreciation, utilities, supplies and maintenance; and store occupancy expenses, including rents, CAM charges, heating, ventilation and air conditioning ("HVAC") charges, real estate taxes and depreciation.

Vendor Allowances

We receive certain allowances from our vendors primarily related to damaged merchandise, markdowns and pricing. Allowances received from vendors related to damaged merchandise and pricing are reflected as a reduction of inventory in the period they are received and allocated to cost of goods sold during the period in which the items are sold. Markdown allowances received from vendors are reflected as reductions to cost of goods sold in the period they are received if the goods have been sold or marked down, or as a reduction of inventory if the goods have not yet been sold. During fiscal years 2018, 2019 and 2020, we received vendor allowances of $3.5 million, $3.2 million and $2.8 million, respectively, substantially all of which were accounted for as a reduction of cost of goods sold. Most of the vendor allowances that we receive are based on on-going agreements and negotiations with vendors.

Selling, General and Administrative Expenses

Selling, general and administrative expenses include: payroll expenses associated with stores and e-Commerce; store and e-Commerce operating expenses other than store occupancy; store pre-opening costs; credit card processing fees; share-based compensation; and payroll and other expenses associated with headquarters and administrative functions.

Marketing Expenses

Marketing expenses include direct mail marketing costs, photographic production and targeted online performance marketing costs such as retargeting, paid search/product listing advertising, and social media advertisements.

Store Pre-Opening Costs

Costs incurred in connection with the opening of new stores, store remodels or relocations are expensed as incurred. We incurred $1.4 million, $1.0 million and $0.1 million of pre-opening costs in fiscal years 2018, 2019

and 2020, respectively, which are recorded in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income.

Shipping and Handling Costs

We classify shipping and handling costs in costs of goods sold in the consolidated statements of operations and comprehensive income. We account for shipping and handling activities that occur after the customer has obtained control of merchandise as a fulfilment cost rather than an additional promised service.

Leases

Accounting for Leases prior to the adoption of ASC 842 (as defined below)

Periods prior to fiscal year 2019 reflect the provisions of ASC 840, *Leases* ("ASC 840") where we recognized minimum rental payments on a straight-line basis over the life of the lease upon taking possession of the premises, taking into account fixed escalations as well as reasonably assured renewal periods.

Adoption of ASC 842 (as defined below)

In the first quarter of fiscal year 2019, we adopted ASU 2016-02, *Leases*, and all related guidance ("ASC 842") and recorded a right-of-use ("ROU") asset and a corresponding lease liability in our consolidated balance sheet for all eligible leases with terms longer than 12 months. This new guidance resulted in the recognition of $366.7 million and $317.7 million of lease liabilities and ROU assets, respectively, upon adoption.

We adopted ASC 842 using the optional transition method, under which our consolidated financial statements as of and for the fiscal years ended February 1, 2020 and January 30, 2021 reflect the provisions of ASC 842 while periods prior to fiscal year 2019 do not.

Upon our adoption of ASC 842, we elected the package of practical expedients and chose not to reassess whether any expired or existing contracts are or contain leases, not to reassess the lease classification for any expired or existing leases and not to reassess initial direct costs for any existing leases.

In accordance with ASC 842, we consider an agreement to be or contain a lease if it conveys us as the lessee with the right to control the use of an identified property, plant and equipment asset for a period of time in exchange for consideration. Based on these criteria, we as the lessee have operating lease agreements with lessors for our retail stores, distribution center and headquarter office space; and vehicles and equipment; under primarily non-cancelable leases with terms ranging from approximately two to seventeen years.

Most of our operating lease agreements contain one or more options to extend the leases at our sole discretion. However, the periods covered by the options to extend the leases of our retail stores, vehicles and equipment are not recognized as part of the associated ROU assets and lease liabilities, as we are not reasonably certain to exercise the options. The periods covered by the options to extend the leases of our distribution center and headquarter office space are recognized as part of the associated ROU assets and lease liabilities, as we are reasonably certain to exercise the options due to the significant effort and investment it would take to move out of these locations. Some of our operating lease agreements contain options to terminate the lease under certain conditions.

The retail space leases provide for rents based upon the greater of the minimum annual rental amounts or a percentage of annual store sales volume. Certain leases provide for increasing minimum annual rental amounts. We consider rents based upon a percentage of annual store sales volume, and other rent-related payments that generally vary because of changes in facts and circumstances (other than due to the passage of time), to be variable lease payments. Variable lease payments associated with retail space leases are recognized as occupancy

costs within cost of goods sold in the consolidated statements of operations and comprehensive income in the period in which the obligation for those payments is incurred. We generally consider all other lease payments to be fixed in nature and the sum of all the discounted remaining fixed payments in the lease terms make up the lease liabilities in our consolidated balance sheet (if the lease terms are longer than 12 months).

Our operating lease agreements do not contain any residual value guarantees or restrictive covenants, and we have not entered into any sublease agreements, lease agreements with related parties, or build-to-suit arrangements that may create significant rights and obligations for us. As the rates implicit in our leases are not readily determinable, we have elected to discount the fixed lease payments that make up the lease liabilities using an incremental borrowing rate that is based on a credit rating analysis using certain key financial metrics of ours and comparable retailers. For all of our leases, we have chosen not to separate nonlease components (such as common area maintenance charges and heating, ventilation and air conditioning charges) from lease components (such as fixed minimum rent payments) and will instead account for each separate lease component and the nonlease components associated with that lease component as a single lease component. We have elected not to apply ASC 842 requirements to leases that have lease terms of 12 months or less upon commencement. We recognize short-term lease payments, if applicable, in the consolidated statements of operations and comprehensive income on a straight-line basis over the lease term.

Income Taxes

We account for income taxes using the liability method. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting bases and tax bases of assets and liabilities and are measured using the enacted tax rates expected to apply to taxable income in the periods in which the deferred tax asset or liability is expected to be realized or settled. Deferred tax assets are reduced by valuation allowances if we believe it is more likely than not that some portion or the entire deferred tax asset will not be realized.

Deferred tax assets and liabilities are measured using the enacted tax rates in effect in the years when those temporary differences are expected to reverse. The effect on deferred taxes from a change in tax rate is recognized through continuing operations in the period that includes the enactment date of the change. Changes in tax laws and rates could affect recorded deferred tax assets and liabilities in the future.

We prescribe a recognition threshold and a measurement attribute for the consolidated financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. We include interest and penalties related to uncertain tax positions in income tax expense in the consolidated statements of operations and comprehensive income.

The amount of income taxes we pay may be subject to periodic audits by the Internal Revenue Service (“IRS”) and other taxing authorities. These audits may challenge certain of our tax positions, such as the timing and amount of deductions and allocation of taxable income to various jurisdictions.

We recognize tax liabilities for our estimate of the potential outcome of any uncertain tax issue, which is subject to our assessment of the relevant risks, facts and circumstances existing at the time, and we adjust these liabilities when our judgment changes as a result of the evaluation of new information not previously available. Due to the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from the current estimate of the tax liabilities. These differences will be reflected as increases or decreases to income tax expense and the effective tax rate in the period in which the new information becomes available.

As of the end of fiscal year 2018, we had finalized the accounting for the income tax effects of the Tax Cuts and Jobs Act (“TCJA”), pursuant to the guidance in the Securities Exchange Commission’s (“SEC’s”) Staff

Accounting Bulletin No. 118, *Income Tax Accounting Implications of the Tax Cuts and Jobs Act* ("SAB 118"). SAB 118 addressed the uncertainty surrounding situations where an entity has not completed its analysis of the income tax effects of the TCJA, upon issuance of its financial statements for the reporting period in which the TCJA was enacted. The amount recorded includes the effects of new tax provisions related to certain types of non-deductible expenses, employment benefits, foreign incomes such as Global Intangible Low-taxed Income ("GILTI") and the Foreign Derived Intangible Income ("FDII"), as well as other domestic provisions that were effective starting in calendar year 2018. We have made a determination on our accounting policy choice to treat taxes related to GILTI as a period cost.

As of the end of fiscal year 2020, we had accumulated undistributed earnings and profits of our foreign subsidiary of approximately $4.1 million. We continue to treat undistributed earnings of our foreign subsidiary as indefinitely reinvested according to our current operating plans and no deferred tax liability has been recorded for potential future taxes related to such earnings. Under the TCJA, any future dividends paid from our foreign subsidiary will not be subject to income tax in the United States, except for withholding taxes and state taxes, which are not material. In fiscal year 2018, we paid the entire $0.2 million transition cash tax.

Share-Based Compensation

We recognize compensation expense associated with incentive units issued by our parent, Torrid Holding LLC, in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income. The compensation expense and related capital contribution are reflected in our consolidated financial statements as these incentive units are deemed to be for our benefit. The intent of the incentive units is to provide profit-sharing opportunities to management rather than equity ownership in our parent. In addition, the incentive units do not have any voting or distribution rights and contain a repurchase feature, whereby upon termination, our parent has the right to purchase from former employees any or all of the vested incentive units at fair value. Based on these aforementioned features and characteristics, we determined that the incentive units were in-substance liabilities accounted for as liability instruments in accordance with ASC 710, *Compensation*. The incentive units are remeasured based on the fair value of the awards at the end of each reporting period. We record the expense associated with changes in the fair value of these incentive units as a capital contribution from our parent as our parent is the legal obligor for the incentive units.

Earnings Per Share

Basic earnings per share is computed by dividing net earnings by the weighted average number of common shares outstanding for the period. Diluted earnings per share is applicable only in periods of net income and is computed by dividing net income by the weighted average number of common shares outstanding for the period and potentially dilutive common share equivalents outstanding for the period. Periods of net loss require the diluted computation to be the same as the basic computation. There were no potentially dilutive common share equivalents outstanding during fiscal years 2018, 2019 and 2020.

Private Label Credit Card

We have an agreement with a third party to provide customers with private label credit cards ("Credit Card Agreement"). Each private label credit card bears the logo of the Torrid brand and can only be used at our store locations and on www.torrid.com. A third party financing company is the sole owner of the accounts issued under the private label credit card program and absorbs the losses associated with non-payment by the private label card holders and a portion of any fraudulent usage of the accounts. Pursuant to the Credit Card Agreement, we receive marketing and promotional funds from the third party financing company for certain expenses we incur based on usage of the private label credit cards. These marketing and promotional funds are recorded as a reduction in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income. During fiscal years 2018, 2019 and 2020, these funds amounted to $8.1 million, $10.0 million and $10.7 million, respectively, related to these private label credit cards.

Employee Benefit Plan

On August 1, 2015, we adopted the Torrid 401(k) Plan ("401(k) Plan"). All employees who have been employed by us for at least 200 hours and are at least 21 years of age are eligible to participate. Employees may contribute up to 80% of their eligible compensation to the 401(k) Plan, subject to a statutorily prescribed annual limit. We may at our discretion contribute certain amounts to eligible employees' accounts. From March 2020 to July 2020, we suspended our contributions to eligible employees' accounts as a precautionary measure in light of uncertainty resulting from COVID-19. During fiscal years 2018 and 2019, we contributed 50% of the first 4% of participants' eligible contributions into their 401(k) Plan accounts. Except for the period during fiscal year 2020 in which we suspended our contributions to eligible employees' accounts in response to COVID-19, we contributed 50% of the first 4% of participants' eligible contributions into their 401(k) Plan accounts. During fiscal years 2018, 2019 and 2020, we contributed $0.4 million, $0.5 million and $0.4 million, respectively, to eligible employees' Torrid 401(k) Plan accounts.

Deferred Compensation Plan

On August 1, 2015, we established the Torrid LLC Management Deferred Compensation Plan ("Deferred Compensation Plan") for the purpose of providing highly compensated employees a program to meet their financial planning needs. The Deferred Compensation Plan provides participants with the opportunity to defer up to 80% of their base salary and up to 100% of their annual earned bonus, all of which, together with the associated investment returns, are 100% vested from the outset. The Deferred Compensation Plan is designed to be exempt from most provisions of the Employee Retirement Security Act of 1974, as amended. All deferrals and associated earnings are our general unsecured obligations. We may at our discretion contribute certain amounts to eligible employees' accounts. From March 2020 to July 2020, we suspended our contributions to eligible employees' accounts as a precautionary measure in light of uncertainty resulting from COVID-19. During fiscal years 2018 and 2019, to the extent participants were ineligible to receive contributions from participation in our 401(k) Plan, we contributed 50% of the first 4% of participants' eligible contributions into their Deferred Compensation Plan accounts. Except for the period during fiscal year 2020 in which we suspended our contributions to eligible employees' accounts in response to COVID-19, we contributed 50% of the first 4% of participants' eligible contributions into their Deferred Compensation Plan accounts. As of February 1, 2020 and January 30, 2021, we did not have any assets of the Deferred Compensation Plan and the associated liabilities were $5.2 million and $6.5 million, respectively, included in non-current liabilities in our consolidated balance sheets.

Note 3. Accounting Standards

Recently Adopted Accounting Standards in Fiscal Year 2019

In March 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2019-01, *Leases*, (Topic 842): *Codification Improvements*. This new guidance amends some aspects of ASC 842 to clarify that entities adopting ASC 842 do not need to provide interim-period disclosures about the effect of the change on income from continuing operations, net income (or other appropriate captions of changes in the applicable net assets or performance indicator), and related per-share amounts, if applicable, for those post-change interim periods. For public entities, the guidance is effective for fiscal years beginning after December 15, 2018, including interim reporting periods within those annual reporting periods. Our adoption of this new guidance in the first quarter of fiscal year 2019 did not have a material impact on our consolidated financial position or results of operations.

In November 2018, the FASB issued ASU 2018-18, *Collaborative Arrangements.* The guidance clarifies that certain transactions between collaborative partners should be accounted for as revenue under Topic 606, *Revenue from Contracts with Customer*s, when the collaborative partner is a customer, and specifies the unit of account for determining whether a transaction with a customer is a distinct good or service under Topic 606. For public companies, the guidance will be effective for fiscal years beginning after December 15, 2019, including

interim reporting periods within those annual reporting periods, and early adoption is permitted. Our adoption of this new accounting guidance in the first quarter of fiscal year 2019 did not have any impact on our consolidated financial position or results of operations.

In February 2018, the FASB issued ASU 2018-02, *Income Statement—Reporting Comprehensive Income* (Topic 220)—*Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*, to allow entities to reclassify the income tax effects of tax reform legislation, commonly referred to as the Tax Cuts and Jobs Act ("TCJA"), on certain items within accumulated other comprehensive income to retained earnings. For public entities, the guidance is effective for fiscal years beginning after December 15, 2018, including interim reporting periods within those annual reporting periods, and early adoption is permitted. Our adoption of this new guidance in the first quarter of fiscal year 2019 did not have a material impact on our consolidated financial position or results of operations.

In September 2017, the FASB issued ASU 2017-13, *Revenue Recognition* (Topic 605)*, Revenue from Contracts with Customers* (Topic 606)*, Leases* (Topic 840)*, and Leases* (Topic 842): *Amendments to SEC Paragraphs Pursuant to the Staff Announcement at the July 20, 2017 EITF Meeting and Rescission of Prior SEC Staff Announcements and Observer Comments.* ASU 2017-13 amends the revenue and leases codification to incorporate a Securities and Exchange Commission ("SEC") staff announcement providing effective date relief for certain public entities adopting the new revenue and leases guidance and rescinds certain older SEC Observer comments on revenue and leases. The guidance codifies the SEC Observer comment announcing that the SEC staff will not object if entities that are considered public business entities solely because their financial statements or summarized financial information are included in an SEC filing follow the adoption dates for 'other entities' when adopting the new revenue and leases standards. ASU 2017-13 rescinds certain SEC Observer comments on accounting for management fees and other SEC staff announcements and Observer comments from the lease guidance. For public entities, the effective date relief guidance is effective immediately while the changes to the codified SEC guidance on leases and revenue are effective upon adoption of these new standards, as applicable. This new guidance did not impact our adoption dates of the revenue and leases guidance in the first quarter of fiscal years 2018 and 2019, respectively.

In February 2016, the FASB issued ASU 2016-02, *Leases*, which replaces the existing guidance in ASC 840. The new guidance establishes an ROU model that requires a lessee to record an ROU asset and a corresponding lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance leases or operating leases, with classification affecting the pattern of expense recognition in the income statement. In July 2018, the FASB issued ASU 2018-11, *Leases* (Topic 842): *Targeted Improvements*, which provides entities with an optional method for adopting the new leasing guidance. The optional transition method allows entities to apply the new guidance at the adoption date by recognizing a cumulative-effect adjustment to the opening balance of the retained earnings, and not to restate the comparative periods presented. In July 2018, the FASB issued ASU 2018-10, *Codification Improvements to Topic 842, Leases*, which amends narrow aspects of the guidance, such as the rate implicit in the lease and certain transition adjustments, to clarify how to apply certain aspects of the new leases standard. For public entities, these lease standards are effective for fiscal years beginning after December 15, 2018, including interim reporting periods within those annual reporting periods. We adopted these new standards on February 3, 2019 by electing the optional transition method. This new guidance resulted in the recognition of $366.7 million and $317.7 million of lease liabilities and ROU assets, respectively, upon adoption on February 3, 2019. The initial ROU assets recognized upon adoption are equal to the initial operating lease liabilities, adjusted for the balances of leasehold interests, deferred rent and lease incentives on the adoption date. In addition, we made a variety of qualitative and quantitative disclosures related to our leases in "Note 9—Leases." Other effects of adopting this new accounting guidance did not have a material impact on our consolidated results of operations or cash flows and are discussed in more detail in "Note 9—Leases."

Recently Adopted Accounting Standards in Fiscal Year 2020

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform* (Topic 848): *Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This ASU provides optional guidance for a limited period of time to ease the potential burden in accounting for or recognizing the effects of reference rate reform on financial reporting. The amendments in this update are effective as of March 12, 2020 through December 31, 2022. Our adoption of this guidance in the first quarter of 2020 did not have a material impact on our consolidated financial position or results of operations.

Accounting Standards Not Yet Adopted

Except as noted below, we have considered all recent accounting pronouncements and have concluded that there are no recent accounting pronouncements that are applicable to us, based on current information.

In December 2019, the FASB issued ASU No. 2019-12, *Simplifying the Accounting for Income Taxes*. The ASU is intended to enhance and simplify aspects of the income tax accounting guidance in ASC 740 as part of the FASB's simplification initiative. This guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2020 with early adoption permitted. We will adopt this ASU on January 31, 2021 and do not expect there to be a material impact on our consolidated financial position or results of operations.

Note 4. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

	February 1, 2020	January 30, 2021
Prepaid income taxes	$ 1,617	$ 417
Prepaid and other information technology expenses	4,708	3,202
Prepaid advertising	2,360	1,241
Other	6,624	8,225
Prepaid expenses and other current assets	$ 15,309	$ 13,085

Note 5. Property and Equipment

Property and equipment are summarized as follows (in thousands):

	February 1, 2020	January 30, 2021
Property and equipment, at cost		
Leasehold improvements	$ 156,814	$ 161,817
Furniture, fixtures and equipment	95,105	98,753
Software and licenses	13,965	15,121
Construction-in-progress	5,986	3,266
	271,870	278,957
Less: Accumulated depreciation and amortization	(102,425)	(135,701)
Property and equipment, net	$ 169,445	$ 143,256

The table reflects approximately $3.5 million of property and equipment we purchased on August 1, 2019 from Hot Topic pursuant to the IT Asset Purchase Agreement (as defined in "Note 11—Related Party Transactions"). We accounted for the purchase in accordance with subsections of ASC 805-50. Please refer to "Note 11—Related Party Transactions" for further discussion regarding the property and equipment purchase

from Hot Topic. The table also reflects approximately $12.0 million of property and equipment we purchased on September 21, 2018 from The Bon-Ton Department Stores, Inc. ("Assignor") and other parties to the Assignor's bankruptcy proceedings. Please refer to "Note 16—Commitments and Contingencies" for further discussion regarding the property and equipment purchase from the Assignor. The $3.5 million purchase from Hot Topic and $12.0 million purchase from the Assignor were accounted for as asset acquisitions as we did not acquire all the elements necessary for either of the acquisitions to qualify as businesses. In addition, substantially all of the fair value of the property and equipment acquired from the Assignor is concentrated in furniture, fixtures and equipment which is considered to be a group of similar identifiable assets in the same major asset class.

We recorded depreciation expense related to our property and equipment in the amounts of $26.7 million, $30.2 million and $33.1 million, during fiscal years 2018, 2019 and 2020, respectively.

During fiscal year 2018, we recognized store impairment charges of $0.7 million in the consolidated statements of operations and comprehensive income. During fiscal years 2019 and 2020, we did not recognize any impairment charges.

Note 6. Implementation Costs Incurred in Cloud Computing Arrangements that are Service Contracts

We defer implementation costs incurred in cloud computing arrangements that are service contracts. The short-term portion of deferred implementation costs incurred in cloud computing arrangements that are service contracts are included in prepaid expenses and other current assets in the consolidated balance sheets, while the long-term portion of these deferred costs are included in deposits and other noncurrent assets. Deferred implementation costs incurred in cloud computing arrangements that are service contracts are summarized as follows (in thousands):

	February 1, 2020	January 30, 2021
Internal use of third party hosted software, gross	$ 4,307	$ 6,095
Less: Accumulated amortization	(1,123)	(2,245)
Internal use of third party hosted software, net	$ 3,184	$ 3,850

During fiscal years 2018, 2019 and 2020, we amortized approximately $0.2 million, $0.8 million and $1.1 million, respectively, of implementation costs incurred in cloud computing arrangements that are service contracts.

Note 7. Intangible Assets

Definite-lived intangible assets and indefinite-lived intangible assets are summarized as follows (in thousands):

	February 1, 2020				January 30, 2021		
	Gross	Accumulated Amortization	Derecognition Upon Adoption of ASC 842	Net Book Value	Gross	Accumulated Amortization	Net Book Value
Indefinite-lived intangible assets:							
Trade name	$ 8,400	$ —	$ —	$ 8,400	$ 8,400	$ —	$ 8,400
Definite-lived intangible assets:							
Leasehold interests	4,535	(4,035)	(500)	—	4,035	(4,035)	—
Total	$ 12,935	$ (4,035)	$ (500)	$ 8,400	$ 12,435	$ (4,035)	$ 8,400

Indefinite-Lived Intangible Assets

We performed our annual impairment assessment of our trade name at the end of the third quarter of fiscal year 2020. The fair value of the trade name was derived by estimating the royalties saved through ownership of the asset. Estimated revenue attributable to the trade name was multiplied by an appropriate arm's-length royalty rate to arrive at royalty savings; cash taxes are deducted from the royalty savings to arrive at the estimated after-tax cash flows derived through ownership of the trade name; then cash flows are discounted using a discount rate estimated to be approximately 15%. The sum of these discounted cash flows, including a hypothetical tax amortization benefit, represented the fair value of the trade name. Our annual impairment assessment indicated there was no impairment.

Definite-Lived Intangible Assets

We did not perform an impairment assessment of our definite-lived intangible leasehold interests in fiscal year 2018, as we did not believe that there had been events or changes in circumstances to indicate that their carrying values may not have been recoverable.

During fiscal year 2018, we amortized $0.1 million of net favorable leasehold interests in occupancy costs within cost of goods sold in our consolidated statements of operations and comprehensive income. In connection with our adoption of ASC 842 on February 3, 2019, we derecognized our net favorable leasehold interests balance and adjusted the carrying amount of the ROU assets by a corresponding amount. As a result, we did not amortize any leasehold interests during the fiscal years 2019 and 2020.

If we had not adopted ASC 842, the estimated amortization expense for our definite-lived intangible assets until they would have been fully amortized in the next two years, is as follows (in thousands):

Fiscal Year	
2021	153
2022	8
Total amortization expense	$ 161

Note 8. Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	February 1, 2020	January 30, 2021
Accrued payroll and related expenses	$ 23,558	$ 25,638
Accrued inventory-in-transit	11,756	21,749
Accrued cost of property and equipment	2,464	1,063
Accrued loyalty program	11,997	12,344
Deferred revenue	2,362	1,512
Gift cards	8,450	9,361
Accrued freight	2,764	4,937
Accrued marketing	4,094	4,696
Accrued sales and use tax	4,248	5,615
Accrued self-insurance liabilities	2,653	2,868
Term loan interest payable	4,821	3,311
Other	13,786	17,267
Accrued and other current liabilities	$ 92,953	$ 110,361

Note 9. Leases

Accounting for Leases under ASC 840

Periods prior to fiscal year 2019 reflect the provisions of ASC 840 where we recognized minimum rental payments on a straight-line basis over the life of the lease upon taking possession of the premises, taking into account fixed escalations as well as reasonably assured renewal periods. Deferred rent represents the difference between rent expense recognized and amounts paid under the terms of the lease agreements. Lease incentives were recorded in full as deferred rent liability and amortized into income as a reduction of rent expense over the non-cancelable term of the applicable lease, including reasonably assured renewal periods.

Total rent expense during fiscal year 2018 was $42.8 million, which includes contingent rent expense of $1.0 million and $1.4 million of noncash deferred rent.

In the table below, the estimated annual future minimum occupancy payments under operating leases include minimum base rents, CAM charges and HVAC charges, for lease terms that include periods covered by options to extend some of our leases, as we are reasonably certain to exercise those options. Options to terminate our leases have not been included in any lease terms as we are not reasonably certain to exercise those options.

The future minimum lease obligations for operating leases with initial terms in excess of one year at February 2, 2019, for each of the next five years and thereafter are as follows (in thousands):

Fiscal Year	
2019	$ 59,593
2020	59,009
2021	58,505
2022	58,265
2023	55,999
Thereafter	157,524
Total minimum operating lease payments	$ 448,895

Accounting for Leases under ASC 842

In the first quarter of fiscal year 2019, we adopted ASC 842 and the initial ROU assets recognized upon adoption are equal to the initial operating lease liabilities, adjusted for the balances of leasehold interests, deferred rent and lease incentives on the adoption date, as reflected in the table below (in thousands):

Lease liabilities recognized upon adoption of ASC 842 on February 3, 2019	$ 366,707
Adjustments to reconcile the lease liabilities to the ROU assets at adoption:	
Lease incentives	(38,482)
Deferred rent	(11,005)
Favorable leasehold interests	500
ROU assets recognized upon adoption of ASC 842 on February 3, 2019	$ 317,720

Our lease costs reflected in the tables below include minimum base rents, CAM charges and HVAC charges. We recognize such lease costs in the applicable expense category in either cost of goods sold, or selling, general and administrative expenses in the consolidated statements of operations and comprehensive income.

Our lease costs consisted of the following (in thousands):

	Fiscal Year Ended	
	February 1, 2020	January 30, 2021
Operating (fixed) lease cost	$ 58,700	$ 40,192
Short-term lease cost	170	124
Variable lease cost	18,237	17,550
Total lease cost	$ 77,107	$ 57,866

In response to the COVID-19 pandemic, the FASB issued interpretive guidance in April 2020, which provides entities the option to elect to account for lease concessions as though the enforceable rights and obligations existed in the original lease terms. We elected this option; accordingly, we do not remeasure the lease liabilities or record a change to the ROU assets for any concessions we receive for our retail store leases. Rather, deferred lease payments are recorded to operating lease liabilities until paid and lease concessions are recorded in the period they are negotiated or when the lower lease expense is paid.

As of the end of fiscal year 2020, we recorded deferred fixed lease payments of $5.8 million in current operating lease liabilities in the consolidated balance sheets. During fiscal year 2020, we recorded a reduction to lease costs of $18.6 million as a result of negotiated lease concessions.

A maturity analysis of our operating lease liabilities, for lease terms that include periods covered by options to extend some of our leases that we are reasonably certain of being executed, for each of the next five years and thereafter, reconciled to our operating lease liabilities recognized in the consolidated balance sheet as of January 30, 2021, is as follows (in thousands):

Fiscal Year	
2021	$ 65,746
2022	60,893
2023	58,637
2024	51,697
2025	41,839
Thereafter	77,174
Total operating lease liabilities	$ 355,986
Less: Imputed interest	(58,530)
Total operating lease liabilities	$ 297,456
Less: Current portion of operating lease liabilities	(50,998)
Noncurrent operating lease liabilities	$ 246,458

Other supplementary information related to our leases is reflected in the table below (in thousands except lease term and discount rate data):

	Fiscal Year 2020
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	$ 40,025
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 3,814
Decrease in right-of-use assets resulting from operating lease modifications or remeasurements	$ (6,493)
Weighted average remaining lease term - operating leases	7 years
Weighted average discount rate - operating leases	6%

Note 10. Revenue Recognition

In the first quarter of fiscal year 2018, we adopted ASC 606 using the modified retrospective adoption method. Under the modified retrospective adoption method, our consolidated financial statements as of and for the fiscal year ended February 2, 2019 and thereafter, reflect the provisions of ASC 606. While prior periods do not reflect the provisions of ASC 606, beginning retained earnings at February 4, 2018 were adjusted for the cumulative effect of ASC 606 on prior periods. As a result of our adoption of ASC 606, we recorded a cumulative adjustment related to revenue from e-Commerce sales shipped to a customer that increased beginning retained earnings by approximately $1.0 million, net of tax. The adoption of the new revenue standard did not have a material impact on our consolidated balance sheet or consolidated statement of operations and comprehensive income as of or for the fiscal year ended February 2, 2019.

Disaggregated Revenue

Our revenue, disaggregated by product category, consists of the following (in thousands):

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Apparel	$ 834,817	$ 951,286	$ 890,511
Non-apparel	74,330	85,698	83,003
Total net sales	$ 909,147	$ 1,036,984	$ 973,514

Amounts within Apparel include revenues earned from the sale of tops, bottoms, dresses, intimates, sleep wear, swim wear and outerwear. Amounts within Non-apparel include revenues earned from the sale of accessories, footwear and beauty. During fiscal years 2018, 2019 and 2020, e-Commerce penetration of total net sales was approximately 42%, 48% and 70%, respectively.

Contract Liabilities

During fiscal year 2019, we recognized revenue of approximately $7.7 million and $4.5 million related to our accrued loyalty program and gift cards, respectively, that existed at the beginning of fiscal year 2019. During fiscal year 2020, we recognized revenue of approximately $9.0 million and $4.8 million related to our accrued loyalty program and gift cards, respectively, that existed at the beginning of fiscal year 2020.

Note 11. Related Party Transactions

Services Agreements with Hot Topic

From June 2, 2017 until its termination on March 21, 2019, we had a services agreement ("Third Party Services Agreement") with Hot Topic, pursuant to which Hot Topic provided us (or caused applicable third parties to provide) certain services, including information technology, distribution and logistics management, real estate leasing and construction management and other services as may have been specified. On March 21, 2019, we entered into an amended and restated services agreement ("Amended and Restated Services Agreement") with Hot Topic under which Hot Topic provides us (or causes applicable third parties to provide) substantially similar services to those provided under the Third Party Services Agreement. The term of the Amended and Restated Services Agreement is three years, unless we or Hot Topic extend the agreement, or we terminate the agreement (or certain services under the agreement). We may terminate the various services upon written notice. Rates and costs related to the services provided under the Amended and Restated Services Agreement may change with approval from both parties. Each month, we are committed to pay Hot Topic for these services and reimburse Hot Topic for certain costs it incurs in the course of providing these services. We record payments made to Hot Topic under these service agreements in the applicable expense category in either cost of goods

sold, or selling, general and administrative expenses. On August 1, 2019, in connection with the IT Asset Purchase Agreement (as defined below), we entered into a services agreement ("Reverse Services Agreement") with Hot Topic, under which Torrid provides Hot Topic with certain information technology services. The term of the Reverse Services Agreement is three years, unless we or Hot Topic extend the agreement, or Hot Topic terminates the agreement. Torrid provides Hot Topic with the specified information technology services at no cost for the first three years of the Reverse Services Agreement, however Hot Topic bears certain capital and operating expenses that it incurs. Costs incurred in connection with providing the specified information technology services to Hot Topic are expensed as incurred in our consolidated statements of operations and comprehensive income. During fiscal years 2019 and 2020, we incurred costs of $2.3 million and $3.0 million, respectively, in connection with providing these information technology services to Hot Topic. In connection with the Reverse Services Agreement, we entered into an amendment to the Amended and Restated Services Agreement ("Amendment to Amended and Restated Services Agreement") with Hot Topic on August 1, 2019, pursuant to which sections pertaining to Hot Topic's provision of information technology services to Torrid were removed.

During fiscal years 2018, 2019 and 2020, Hot Topic charged us $54.6 million, $35.3 million and $12.3 million, respectively, for various services under the applicable service agreements, of which $14.9 million, $14.5 million and $9.6 million, respectively, were recorded as components of cost of goods sold, and the remaining $39.7 million, $20.8 million and $2.7 million, respectively, were charged to selling, general and administrative expenses. As of February 1, 2020, we owed $0.4 million to Hot Topic under the applicable service agreements, which is included in due to related parties in our consolidated balance sheets. As of January 30, 2021, we did not owe any amount to Hot Topic for these services.

Hot Topic incurs certain direct expenses on our behalf, such as payments to our non-merchandise vendors and each month, we pay Hot Topic for these pass-through expenses. As of February 1, 2020, the net amount we owed Hot Topic for these expenses was $4.7 million, which is included in due to related parties in our consolidated balance sheets. As of January 30, 2021, we had prepaid Hot Topic $0.4 million for these expenses, which are included in prepaid expenses and other current assets in our consolidated balance sheets.

IT Asset Purchase Agreement with Hot Topic

On June 14, 2019, we entered into an asset purchase agreement ("IT Asset Purchase Agreement") with Hot Topic pursuant to which we purchased certain information technology assets from Hot Topic for $29.5 million on August 1, 2019. Funds obtained from the Term Loan Credit Agreement (as defined in "Note 12 – Debt Financing Arrangements") were used to make the purchase. We accounted for the purchase in accordance with subsections of ASC 805-50 related to transactions between entities under common control. Consequently, we recorded the information technology assets we purchased from Hot Topic at their historical carrying amounts totaling $3.5 million and recognized the difference between the historical carrying amounts and the purchase price in equity. In addition, certain information technology-related obligations and personnel, along with associated assets of $1.4 million and liabilities of $0.1 million, were transferred from Hot Topic to Torrid. In connection with the IT Asset Purchase Agreement, we and Hot Topic agreed to enter into the Reverse Services Agreement and Amendment to Amended and Restated Services Agreement upon the closing date of the IT Asset Purchase Agreement, which was August 1, 2019.

Promissory Notes Receivable from Parent

From time to time, our parent issues promissory notes receivable to us. Due to the nature of these promissory notes receivable, we consider them to be in-substance distributions to our parent and account for them as contra-equity in accordance with ASC 310, *Receivables*. Consequently, these promissory notes receivable are reflected within equity in our consolidated balance sheets as reductions in additional paid-in capital, within capital distribution to Torrid Holding LLC, net of contribution, in our consolidated statements of stockholder's deficit, and within capital distribution to Torrid Holding LLC, net of contribution, in our

consolidated statements of cash flows as financing cash outflows. Associated interest due to us will be recorded as equity when actual interest payments are made.

On December 20, 2018, our parent issued a $61.4 million promissory note to us in exchange for cash, due on or before December 20, 2024 ("$61.4M Related Party Promissory Note Receivable"). The funds realized from the $61.4M Related Party Promissory Note Receivable were invested by our parent in HTI (as defined below) and used by HTI (as defined below) and Hot Topic for the partial redemption of Hot Topic's 9.25% senior secured notes ("Notes"). The $61.4M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 3.06% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $61.4 million lump sum principal payment due to us upon the December 20, 2024 maturity date. The total amount of interest our parent owed us as of the end of fiscal years 2019 and 2020 was $2.1 million and $4.0 million, respectively.

On June 6, 2019, our parent issued a $20.0 million promissory note to us in exchange for cash, due on or before June 6, 2025 ("$20M Related Party Promissory Note Receivable"). The $20M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.78% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $20.0 million lump sum principal payment due to us upon the June 6, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal years 2019 and 2020 was $0.4 million and $0.9 million, respectively.

On June 14, 2019, our parent issued a $10.0 million promissory note to us in exchange for cash, due on or before June 14, 2025 ("$10M Related Party Promissory Note Receivable"). The $10M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.78% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $10.0 million lump sum principal payment due to us upon the June 14, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal years 2019 and 2020 was $0.2 million and $0.5 million, respectively.

On July 31, 2019, our parent issued a $214.6 million promissory note to us, due on or before July 31, 2025 ("$214.6M Related Party Promissory Note Receivable"). The $214.6M Related Party Promissory Note Receivable was issued to us in exchange for the $213.2 million investment we made in HTI (as defined below) on June 14, 2019 plus the associated $1.4 million interest due to us through July 31, 2019. The $214.6M Related Party Note Receivable accrues interest at an annual compounding rate of 1.87% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $214.6 million lump sum principal payment due to us upon the July 31, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal years 2019 and 2020 was $2.0 million and $6.1 million, respectively.

On August 1, 2019, our parent issued a $1.2 million promissory note to us in exchange for cash, due on or before August 1, 2025 ("$1.2M Related Party Promissory Note Receivable"). The $1.2M Related Party Promissory Note Receivable was issued to us in exchange for purchasing $1.2 million of senior participating preferred stock from HTI (as defined below) on behalf of our parent. The $1.2M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.87% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $1.2 million lump sum principal payment due to us upon the August 1, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal years 2019 and 2020 was not material.

On November 26, 2019, our parent issued a $12.0 million promissory note to us in exchange for cash, due on or before November 26, 2025 ("$12M Related Party Promissory Note Receivable"). The $12M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.59% due upon its maturity. As of the end of fiscal years 2019 and 2020, there was a $12.0 million lump sum principal payment due to us upon the November 26, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2019 was not material and the total amount of interest our parent owed us as of the end of fiscal year 2020 was $0.2 million.

As of January 30, 2021, no principal or interest payments had been made to us by our parent.

Promissory Note Payable to Parent

On May 1, 2015, we issued a $45.0 million promissory note to our parent in exchange for cash, due on or before May 1, 2018 ("Related Party Promissory Note Payable"). On June 16, 2016, we made a $29.8 million repayment of the Related Party Promissory Note Payable and paid $0.2 million of related interest. The Related Party Promissory Note Payable accrued interest at an annual compounding rate of 0.43% upon its maturity, which is equal to the federal rate for May 2015 for a short-term instrument with an annual compounding interest rate. On January 9, 2018, we issued an amended and restated promissory note to our parent for $15.3 million ("Amended Related Party Promissory Note Payable"), which amended our Related Party Promissory Note Payable. The amendment rolled the outstanding principal and accrued interest balances associated with the Related Party Promissory Note Payable into the principal balance of the Amended Related Party Promissory Note Payable. The Amended Related Party Promissory Note Payable was due on or before January 9, 2024 and accrued interest at an annual compounding rate of 2.18% upon its maturity, which is equal to the applicable federal rate for January 2018 for a mid-term instrument with an annual compounding interest rate. All other material terms of the Amended Related Party Promissory Note Payable were substantially similar to the Related Party Promissory Note Payable it replaced.

On December 20, 2018, we repaid the Amended Related Party Promissory Note and related interest in full. The payment consisted of $15.3 million of principal and $0.3 million of related interest.

Contribution from Parent

On October 9, 2018, we received a capital contribution of $0.7 million from our parent, related to the reimbursement of certain expenses we paid on its behalf.

Sponsor Advisory Services Agreement

In connection with the Separation, we entered into an advisory services agreement with Sycamore dated May 1, 2015, pursuant to which Sycamore agreed to provide strategic planning and other related services to us. We are obligated to reimburse Sycamore for its expenses incurred in connection with providing such advisory services to us. As of the end of fiscal years 2019 and 2020, there were no amounts due and during fiscal years 2018, 2019 and 2020, no amounts were paid under this agreement.

From time to time, we reimburse Sycamore for certain management expenses it pays on our behalf. As of the end of fiscal year 2019, the amount due was not material and as of the end of fiscal year 2020, there was no amount due. During each of the fiscal years 2018, 2019 and 2020, the reimbursements we made to Sycamore for such expenses were $0.1 million.

Other Related Party Transactions

On June 14, 2019, we used funds obtained from the Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") to purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp. ("HTI"). HTI used the funds it received from us to redeem its Notes. We accounted for the purchase under the cost method in accordance with ASC 325, *Investments—Other*. On July 31, 2019, our parent issued the $214.6M Related Party Promissory Note Receivable to us in exchange for our $213.2 million investment in HTI's senior participating preferred stock, including $1.4 million of accrued interest. Due to the nature of this $214.6M Related Party Promissory Note Receivable, we consider it to be an in-substance distribution to our parent and account for it as contra-equity.

MGF Sourcing US, LLC, an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During fiscal years 2018, 2019 and 2020, purchases from this supplier were $31.3 million, $35.9 million and $38.4 million, respectively, which accounted for less than 10% of total purchases in fiscal years 2018, 2019 and 2020. As of the end of fiscal years 2019 and 2020, the net amounts we owed MGF Sourcing US, LLC for these purchases were $3.2 million and $8.0 million, respectively. This liability is included in due to related parties in our consolidated balance sheets.

HU Merchandising, LLC, a subsidiary of Hot Topic, is one of our suppliers. During fiscal years 2018, 2019 and 2020, purchases from this supplier were $0.5 million, $0.6 million and $0.4 million, respectively. As of the end of fiscal year 2019, there was no amount due to HU Merchandising, LLC for these purchases and as of the end of fiscal year 2020, the amount due to HU Merchandising, LLC was $0.1 million.

Staples, Inc., an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During fiscal year 2018, purchases from this supplier were $0.1 million. During fiscal years 2019 and 2020, purchases from this supplier were not material. As of the end of fiscal years 2019 and 2020, amounts due to this supplier were not material.

We have a merchandise supply arrangement with Belk, Inc., an entity controlled by affiliates of Sycamore. During fiscal year 2018, we recognized $0.4 million of revenue in net sales related to this arrangement. During fiscal years 2019 and 2020, we did not recognize any revenue from Belk. As of the end of fiscal years 2019 and 2020, there were no amounts due to us from Belk, Inc.

Prior to fiscal year 2020, Hot Topic provided us with licensing services for certain of our goods, such as license procurement and design services. During fiscal years 2018 and 2019, Hot Topic charged us $0.5 million and $0.1 million, respectively, for these services, which were recorded as components of cost of goods sold. As of the end of fiscal years 2019 and 2020, there were no amounts due to Hot Topic for these licensing services.

In April 2020, we received a letter from Sycamore for up to $20.0 million of additional equity funding which, if necessary and sufficient, would be provided to further prevent noncompliance with the financial covenants in the Amended Term Loan Credit Agreement (as defined in “Note 12—Debt Financing Arrangements”) through May 2021. In September 2020, we received an updated letter of support from Sycamore extending the equity funding commitment of up to $20.0 million, if necessary and sufficient, through January 2022.

On March 11, 2021, subsequent to the end of fiscal year 2020, Hot Topic entered into a consulting services agreement with our Chief Financial Officer, George Wehlitz, Jr. (“CFO”), pursuant to which Hot Topic agreed to pay our CFO a consulting fee of $10,000 per month. The agreement was effective from January 3, 2021 and will remain effective until May 31, 2021, or until it is terminated by either party upon 30 day’s prior written notice, whichever is earlier.

Note 12. Debt Financing Arrangements

Our debt financing arrangements consist of the following (in thousands):

	February 1, 2020	January 30, 2021
Existing ABL Facility, as amended	$ —	$ —
Term loan		
Term loan	256,100	210,700
Less: current portion of unamortized original issue discount and debt financing costs	(1,370)	(1,494)
Less: noncurrent portion of unamortized original issue discount and debt financing costs	(5,307)	(4,294)
Total term loan outstanding, net of unamortized original issue discount and debt financing costs	249,423	204,912
Less: current portion of term loan, net of unamortized original issue discount and debt financing costs	(9,030)	(11,506)
Total term loan, net of current portion and unamortized original issue discount and debt financing costs	$ 240,393	$ 193,406

Fixed mandatory principal repayments due on the outstanding term loan are as follows as of January 30, 2021 (in thousands):

Fiscal Year	
2021	13,000
2022	16,250
2023	19,500
2024	161,950
	$ 210,700

Term Loan Credit Agreement

On June 14, 2019, we entered into a term loan credit agreement ("Term Loan Credit Agreement") with Cortland Capital Market Services LLC, as agent, KKR Credit Advisors (US) LLC, as structuring advisor, and the lenders party thereto (the "Lenders"). On September 17, 2020, we entered into an amended term loan credit agreement ("Amended Term Loan Credit Agreement") with the Lenders, pursuant to which the definition of total debt used in the calculation of Total Net Leverage Ratio (as defined below) was amended. All other material terms of the Term Loan Credit Agreement remain substantially the same. In September 2020, in conjunction with the Amended Term Loan Credit Agreement, we prepaid $35.0 million of the outstanding Principal (as defined below), associated accrued interest of $0.2 million and an amendment fee of $0.5 million.

The Amended Term Loan Credit Agreement provides for term loans in an initial aggregate amount of $260.0 million ("Principal"), which is recorded net of an original issue discount ("OID") of $2.9 million and has a maturity date of December 14, 2024. In connection with the Term Loan Credit Agreement, we paid financing costs of approximately $4.6 million.

The $257.1 million proceeds of the Term Loan Credit Agreement, net of OID, were used to i) purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp. for which we subsequently received a promissory note receivable in exchange from our parent; ii) purchase certain information technology assets from Hot Topic for $29.5 million; iii) make a $10.0 million distribution to our parent; and iv) pay for financing costs associated with the Term Loan Credit Agreement.

Loans made pursuant to the Amended Term Loan Credit Agreement bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate quoted by The Wall Street Journal, (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month, plus 1.00% or (b) at a LIBOR rate for the interest period relevant to such borrowing, in each case plus an applicable margin of either 6.75% or 7.00% for LIBOR borrowings of either 5.75% or 6.00% for base rate borrowings, in each case, based upon our total net leverage ratio as of the relevant testing date.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we elect the Base rate loan, interest is due and payable the last day of each fiscal quarter. The elected interest rate on January 30, 2021 was approximately 8%.

In addition to paying interest on the outstanding Principal under the Amended Term Loan Credit Agreement, we are required to make fixed mandatory repayments of the Principal on the last business day of each fiscal quarter until maturity ("Repayment"). Repayments for the first four fiscal quarters, starting in the third quarter of fiscal year 2019, represent 0.75% of the Principal, reduced as a result of the application of prior Prepayments, as defined below. For each of the eight fiscal quarters thereafter, Repayments represent 1.25% of the Principal, reduced as a result of the application of prior Prepayments, as defined below. For each of the 10 fiscal quarters thereafter until the maturity date, Repayments represent 1.875% of the Principal, reduced as a result of the application of prior Prepayments, as defined below.

Under the Amended Term Loan Credit Agreement, we are also required to make variable mandatory prepayments of the Principal, under certain conditions as described below, approximately 102 days after the end of each fiscal year (each, a "Prepayment"). Prepayments, if applicable, commence at the end of fiscal year 2019 and represent between 25% and 75% (depending on our first lien net leverage ratio) of Excess Cash Flow (as defined in the Amended Term Loan Credit Agreement) in excess of $2.0 million, minus prepayments of Principal, the Existing ABL Facility, as amended, (to the extent accompanied by a permanent reduction in the commitments thereunder) and certain other specified indebtedness and amounts in connection with certain other enumerated items. As of the end of fiscal year 2020, our Excess Cash Flow amount was $2.0 million, which did not meet the Excess Cash Flow threshold to require a Prepayment.

In addition to mandatory Repayment and Prepayment obligations, we may at our option, prepay a portion of the outstanding Principal ("Optional Prepayment"). If we make Optional Prepayments before June 14, 2022, we will be subject to penalties ranging from 1.00% to 3.00% of the aggregate principal amount, with the exception of up to $50.0 million that may be repaid with the proceeds of a qualifying initial public offering ("IPO") without penalty.

All of Torrid LLC's existing domestic subsidiaries and Torrid Intermediate LLC unconditionally guarantee all obligations under the Amended Term Loan Credit Agreement. Substantially all of the assets of Torrid LLC, Torrid LLC's existing subsidiaries and Torrid Intermediate LLC will secure all such obligations and the guarantees of those obligations, subject to certain exceptions.

Our borrowings under the Amended Term Loan Credit Agreement are subject to a financial covenant that requires us to maintain a maximum ratio of our total debt to EBITDA, as defined in the Amended Term Loan Credit Agreement ("Total Net Leverage Ratio"). The maximum ratio is 3.60 for the quarter ended November 2, 2019, 3.35 for the quarters ended February 1, 2020, May 2, 2020, and August 1, 2020, 3.10 for the quarter ended October 31, 2020, 2.50 for the quarter ended January 30, 2021, 2.35 for the quarter ending May 1, 2021, 2.10 for the quarters ending July 31, 2021 and October 30, 2021, and 1.85 for all quarters thereafter. The Amended Term Loan Credit Agreement amended the definition of total debt used in the Total Net Leverage Ratio calculation for the quarters ended October 31, 2020 and January 30, 2021, and the quarters ending May 1, 2021 and July 31, 2021. The amended definition of total debt permits us to exclude indebtedness associated with our Existing ABL Facility, as amended, through the quarter ended October 31, 2020, removes the $20.0 million cap from the

amount of cash and cash equivalents on-hand that we are permitted to net against our total debt for purposes of the ratio calculation through the quarter ended January 30, 2021, and raises the $20.0 million cap to $40.0 million and $30.0 million for the quarters ending May 1, 2021 and July 31, 2021, respectively, before reverting to $20.0 million for all quarters thereafter. As of January 30, 2021, our Total Net Leverage Ratio was 0.91. We anticipate meeting this covenant in future periods, including periods in which the definition of total debt reverts to the $20.0 million cap.

The Amended Term Loan Credit Agreement contains a limitation on our capital expenditures paid in cash in any fiscal year and such expenditures may not exceed 37.5% of prior year Adjusted EBITDA, as defined by the Amended Term Loan Credit Agreement. If the amount of our capital expenditures paid in cash in any fiscal year is less than the 37.5% threshold, 50% of the difference is automatically applied to increase the maximum threshold in the next fiscal year. The Amended Term Loan Credit Agreement also contains a number of covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: create, incur or assume liens on our assets or property; incur additional indebtedness; make capital expenditures; issue preferred or disqualified stock; incur hedging obligations; consolidate or merge; sell assets; pay dividends or make distributions, make investments or engage in transactions with our affiliates.

As of January 30, 2021, we were compliant with our debt covenants under the Amended Term Loan Credit Agreement.

We consider the carrying amount of the term loan to approximate fair value because of the variable interest rate of the term loan.

As of January 30, 2021, total borrowings, net of OID and financing costs, of $204.9 million remain outstanding under the Amended Term Loan Credit Agreement. During fiscal year 2019, we recognized $14.9 million of interest expense and recognized $0.9 million of OID and financing costs related to the Term Loan Credit Agreement. During fiscal year 2020, we recognized $19.2 million of interest expense and recognized $1.4 million of OID and financing costs related to the Amended Term Loan Credit Agreement. The OID and financing costs are amortized over the Amended Term Loan Credit Agreement's five and a half-year term and are reflected as a direct deduction of the face amount of the term loan in our consolidated balance sheets. We recognize interest payments, together with amortization of the OID and financing costs, in interest expense in our consolidated statements of operations and comprehensive income.

Senior Secured Asset-Based Revolving Credit Facility

In May 2015, we entered into a credit agreement for a senior secured asset-based revolving credit facility ("Original ABL Facility") of $50.0 million (subject to a borrowing base), with Bank of America, N.A. On October 23, 2017, we entered into an amended and restated credit agreement ("Existing ABL Facility"), which amended our Original ABL Facility. The Existing ABL Facility increased the aggregate commitments available under the Original ABL Facility from $50.0 million to $100.0 million (subject to a borrowing base); and increased our right to request additional commitments from up to $30.0 million to up to $30.0 million plus the aggregate principal amount of any permanent principal reductions we may take (subject to customary conditions precedent). On June 14, 2019, in conjunction with the Term Loan Credit Agreement, we entered into an amendment to the Existing ABL Facility (the "1st Amendment"). The 1st Amendment decreased the aggregate commitments available under the Existing ABL Facility from $100.0 million to $70.0 million (subject to a borrowing base), permitted indebtedness incurred pursuant to the Term Loan Credit Agreement and made certain other modifications. On September 4, 2019, we entered into another amendment to the Existing ABL Facility (the "2nd Amendment"). The 2nd Amendment permitted parent company financial statements to be used to satisfy reporting requirements and made certain other modifications. The principal amount outstanding of the loans under the Existing ABL Facility, as amended, is due and payable in full on October 23, 2022. All other material terms of the Existing ABL Facility existing prior to the 1st Amendment and 2nd Amendment remain substantially the same.

The borrowing base for the Existing ABL Facility, as amended, at any time equals the sum of 90% of eligible credit card receivables, plus 90% of the appraised net orderly liquidation value of eligible inventory and eligible in-transit inventory multiplied by the cost of such eligible inventory and eligible in-transit inventory (to be increased to 92.5% during the period beginning on September 1 of each year and ending on December 31 of each year). The Existing ABL Facility, as amended, includes borrowing capacity for letters of credit and for borrowings on same-day notice, referred to as Swing Line Loans, and is available in U.S. dollars.

Under the Existing ABL Facility, as amended, we have the right to request up to $30.0 million of additional commitments plus the aggregate principal amount of any permanent principal reductions we may take. The lenders under this facility are not under any obligation to provide any such additional commitments, and any increase in commitments is subject to customary conditions precedent. If we were to request any such additional commitments and the existing lenders or new lenders were to agree to provide such commitments, the size of the Existing ABL Facility, as amended, could increase to up to $100.0 million, but our ability to borrow under this facility would still be limited by the amount of the borrowing base.

Borrowings under the Existing ABL Facility, as amended, bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate of Bank of America, N.A., (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month adjusted for certain costs, plus 1.00% or (b) at a LIBOR rate for the interest period relevant to such borrowing adjusted for certain costs ("Adjusted LIBOR"), in each case plus an applicable margin that ranges from 1.25% to 1.75% for LIBOR borrowings and 0.25% to 0.75% for base rate borrowings, in each case, based on average daily availability. As of the end of fiscal year 2020, the applicable interest rate for borrowings under the Existing ABL Facility, as amended, was approximately 4% per annum.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we opt for the base rate (including a Swing Line Loan), interest is due and payable on the first business day of each month and on the maturity date.

In addition to paying interest on outstanding principal under the Existing ABL Facility, as amended, we are required to pay a commitment fee in respect of unutilized commitments. The commitment fee ranges between 0.25% and 0.375% per annum of unutilized commitments and will be subject to adjustment each fiscal quarter based on the amount of unutilized commitments during the immediately preceding fiscal quarter. We must also pay customary letter of credit fees and agent fees.

If at any time the aggregate amount of outstanding loans, unreimbursed letter of credit drawings and undrawn letters of credit under the Existing ABL Facility, as amended, exceeds the lesser of (a) the commitment amount and (b) the borrowing base, we will be required to repay outstanding loans and/or cash collateralize letters of credit in an aggregate amount equal to such excess, with no reduction of the commitment amount.

We may voluntarily reduce the unused portion of the commitment amount and repay outstanding loans at any time. Prepayment of the loans may be made without premium or penalty other than customary "breakage" costs with respect to LIBOR loans.

All obligations under the Existing ABL Facility, as amended, are unconditionally guaranteed by substantially all of Torrid Intermediate LLC's existing majority-owned domestic subsidiaries and will be required to be guaranteed by certain of Torrid Intermediate LLC's future domestic majority-owned subsidiaries. All obligations under the Existing ABL Facility, as amended, and the guarantees of those obligations, will be secured, subject to certain exceptions, by substantially all of Torrid Intermediate LLC's assets.

The Existing ABL Facility, as amended, requires us to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 if we fail to maintain Specified Availability, as defined by the Existing ABL Facility, as amended, of at

least the greater of 10% of the Loan Cap, as defined by the Existing ABL Facility, as amended, and $5.0 million. The Existing ABL Facility, as amended, contains a number of other covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: incur additional indebtedness; pay dividends on our capital stock or redeem, repurchase or retire our capital stock or our other indebtedness; make investments, loans and acquisitions; engage in transactions with our affiliates; sell assets, including capital stock of our subsidiaries; alter the business we conduct; consolidate or merge; and incur liens. As of February 1, 2020 and January 30, 2021, we were compliant with our debt covenants under the Existing ABL Facility, as amended.

The Existing ABL Facility, as amended, specifically restricts dividends and distributions, aside from amounts to cover ordinary operating expenses and taxes, between our subsidiaries and to us. However, dividends and distributions are permitted at any time that either (1) availability under the Existing ABL Facility, as amended, is equal to or greater than 15% of the maximum borrowing amount on a pro forma basis and we are pro forma compliant with a 1.00 to 1.00 fixed charge coverage ratio or (2) availability under the Existing ABL Facility, as amended, is equal to or greater than 20% of the maximum borrowing amount on a pro forma basis. As of the end of fiscal years 2019 and 2020, the maximum restricted payments utilizing the Existing ABL Facility, as amended, that our subsidiaries could make from its net assets were $57.5 million and $55.0 million, respectively.

We consider the carrying amounts of the Existing ABL Facility, as amended, to approximate fair value because of the variable interest rate of this facility.

Availability under the Existing ABL Facility, as amended, at the end of fiscal year 2019 was $68.0 million, which reflects no borrowings. Availability under the Existing ABL Facility, as amended, at the end of fiscal year 2020 was $65.5 million, which reflects no borrowings. In March 2020, we borrowed $50.0 million from our Existing ABL Facility, as amended, as a precautionary measure to increase our cash position and preserve financial flexibility in light of current uncertainty resulting from COVID-19. In the second quarter of fiscal year 2020, we repaid the $50.0 million outstanding under the Existing ABL Facility, as amended. Standby letters of credit issued and outstanding were $2.0 million and $4.5 million as of February 1, 2020 and January 30, 2021, respectively. During the third quarter of fiscal year 2017, we incurred $0.5 million of financing costs for the Existing ABL Facility, as amended. These financing costs, together with the then unamortized financing costs of $0.2 million associated with the Original ABL Facility, further reduced in fiscal year 2019 by $0.1 million written off to account for the impact of our entry into the 1st Amendment, are amortized over the Existing ABL Facility's five-year term and are reflected in prepaid expenses and other current assets and deposits and other noncurrent assets in our consolidated balance sheets. During fiscal years 2018, 2019 and 2020, we amortized financing costs of $0.1 million in each period. During fiscal years 2018, 2019 and 2020, interest payments were $0.5 million, $0.5 million and $0.6 million, respectively. We recognize amortization of financing costs and interest payments for the revolving credit facilities in interest expense in our consolidated statements of operations and comprehensive income.

Note 13. Income Taxes

Income Before Provision for Income Taxes

The domestic and foreign income before provision for income taxes during fiscal years 2018, 2019 and 2020 is as follows (in thousands):

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Domestic	$ 101,081	$ 57,348	$ 38,703
Foreign	1,673	3,354	(3,175)
Income before provision	$ 102,754	$ 60,702	$ 35,528

Provision for Income Taxes

The composition of the provision for income taxes during fiscal years 2018, 2019 and 2020 is as follows (in thousands):

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Current:			
Federal	$ 9,479	$ 17,784	$ 9,528
State	3,162	4,472	2,559
Foreign	195	1,263	(37)
	$ 12,836	$ 23,519	$ 12,050
Deferred:			
Federal	$ 2,925	$ (4,008)	$ (157)
State	276	(623)	(361)
Foreign	5	(55)	(541)
	3,206	(4,686)	(1,059)
Total income tax provision	$ 16,042	$ 18,833	$ 10,991

Significant components of our deferred tax assets and liabilities are as follows (in thousands):

	February 1, 2020	January 30, 2021
Deferred tax assets (liabilities):		
Inventory	$ 1,520	$ 2,010
Loyalty reserve	3,104	3,169
Accrued bonus	2,681	2,110
Deferred rent	756	812
Deferred compensation	1,296	1,612
Lease liability	83,905	72,837
ROU assets	(73,665)	(62,216)
Intangible assets	(2,087)	(2,074)
Depreciation	(15,735)	(16,096)
Other	2,039	3,975
Total net deferred tax assets	$ 3,814	$ 6,139

A reconciliation of the provision for income taxes to the statutory tax rate is as follows:

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Statutory federal rate	21.0%	21.0%	21.0%
State and local taxes, net of federal benefit	2.4	4.6	5.5
Share-based compensation	(7.8)	4.2	4.6
Liability for uncertain tax positions	0.3	0.7	(1.2)
Information technology services charge	—	—	1.8
Other differences, net	(0.3)	0.5	(0.8)
Effective income tax rate	15.6%	31.0%	30.9%

The effective tax rates in fiscal years 2018, 2019 and 2020 reflect non-deductible and non-taxable fair market value adjustments to the share-based compensation expense, for which there is no associated income tax benefit or expense.

On December 22, 2017, the TCJA was enacted in the United States. As of the end of fiscal year 2018, we finalized the accounting for the income tax effects of the TCJA. The amount recorded includes the effects of new tax provisions related to certain types of non-deductible expenses, employment benefits, foreign incomes such as GILTI and FDII, as well as other domestic provisions that were effective starting in calendar year 2018. We made a determination on our accounting policy choice to treat taxes related to GILTI as a period cost.

As of the end of fiscal year 2020, we had accumulated undistributed earnings and profits of our foreign subsidiary of approximately $4.1 million. We continue to treat undistributed earnings of our foreign subsidiary as indefinitely reinvested according to our current operating plans and no deferred tax liability has been recorded for potential future taxes related to such earnings. Under the TCJA, any future dividends paid from our foreign subsidiary will not be subject to income tax in the United States, except for withholding taxes and state taxes, which are not material.

On March 27, 2020, December 27, 2020 and March 11, 2021 (subsequent to the end of fiscal year 2020), the CARES Act, CAA and ARPA, respectively, were signed into law and have resulted in significant changes to the U.S. federal corporate tax law as described in "Note 1—Basis of Presentation and Description of the Business." We have considered the applicable CARES Act and CAA tax law changes in our tax provision for the year ended January 30, 2021, and continue to evaluate the impact of these and the ARPA tax law changes on future periods.

Uncertain Tax Positions

The amount of income taxes we pay is subject to ongoing audits by taxing authorities. Our estimate of the potential outcome of any uncertain tax issue is subject to our assessment of the relevant risks, facts and circumstances existing at the time. We believe that we have adequately provided for reasonably foreseeable outcomes related to these matters. However, our future results may include favorable or unfavorable adjustments to our estimated tax liabilities in the period the assessments are made or resolved, which may impact our effective tax rate. As of the end of fiscal year 2018, the total liability for income tax associated with unrecognized tax benefits, including interest and penalties, was $1.1 million ($0.9 million, net of federal benefit). As of the end of fiscal year 2019, the total liability for income tax associated with unrecognized tax benefits, including interest and penalties, was $1.7 million ($1.4 million, net of federal benefit). As of the end of fiscal year 2020, the total liability for income tax associated with unrecognized tax benefits, including interest and penalties, was $2.4 million ($2.0 million, net of federal benefit). Our effective tax rate will be affected by any portion of this liability we may recognize.

We believe that it is reasonably possible that $0.2 million ($0.2 million net of federal benefit) of our liability for unrecognized tax benefits, of which the associated interest and penalties are not material, may be recognized in the next 12 months due to the expiration of statutes of limitations.

The following table reconciles the amount recorded for the liability for income tax associated with unrecognized tax benefits as of the end of fiscal years 2018, 2019 and 2020 (in thousands):

	Fiscal Year Ended		
	February 2, 2019	February 1, 2020	January 30, 2021
Unrecognized tax benefits at the beginning of the fiscal year	$ 672	$ 896	$ 1,308
Additions:			
Tax positions related to the current period	296	424	1,455
Tax positions related to the prior period	(72)	(12)	(576)
Unrecognized tax benefits at the end of the fiscal year	$ 896	$ 1,308	$ 2,187

Our continuing practice is to recognize interest and penalties related to unrecognized tax benefits as a tax expense. In fiscal years 2018, 2019 and 2020, tax expense related to interest and penalties was $0.2 million, $0.3 million and $0.3 million, respectively.

We operate stores throughout the United States, Puerto Rico and Canada, and as a result, we file income tax returns in the United States federal jurisdiction and various state, local and foreign jurisdictions. In the normal course of business, we are subject to examination by taxing authorities. The federal statute of limitations period is three years and most states follow this limitations period with few exceptions. Consequently, tax years between 2017 and 2019 are open for examination.

IT Asset Purchase Agreement with Hot Topic

In connection with the IT Asset Purchase Agreement we entered into with Hot Topic on August 1, 2019, we generated a tax amortizable basis of the $29.5 million purchase price, amortizable over three years commencing in fiscal year 2019. We recorded the $26.0 million variance between the $3.5 million net book value and $29.5 million tax amortizable basis of the information technology assets in equity, net of $6.7 million deferred tax.

Note 14. Share-Based Compensation

Incentive Units

Beginning in fiscal year 2015 and through fiscal year 2020, our parent, Torrid Holding LLC, issued 13.7 million Class A, Class B, Class C, Class D, Class E, Class F, Class G, Class H and Class J Torrid incentive units in the aggregate, net of forfeitures, to certain members of our management.

The incentive units were valued utilizing a contingent claims analysis ("CCA") methodology based on a Black-Scholes option pricing model ("OPM"). Under the OPM, each class of incentive units is modeled as a call option with a unique claim on the assets of our parent. The characteristics of each class of incentive units determine the uniqueness of the claim on the assets of our parent. The OPM used to value the incentive units incorporates various assumptions, including the time to liquidity event, equity volatility and risk-free interest rate of return. Equity volatility is based on the historical volatilities of comparable publicly traded companies for the time horizon equal to the time to the anticipated liquidity event; and the risk-free interest rate is for a term corresponding to the time to liquidity event. The assumptions underlying the valuation of the incentive units represent our best estimates, which involve inherent uncertainties and the application of our judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our non-cash share-based compensation expense could be materially different. Our non-cash share-based compensation expense could also be materially different if there are significant fluctuations in the Torrid Holding LLC equity value.

The following assumptions were used in the CCA methodology based on a Black-Scholes OPM to value the Torrid incentive units as of the end of each fiscal year:

	Fiscal Year Ended	
	February 1, 2020	January 30, 2021
Time to liquidity event	0.5 years	0.5 years
Equity volatility	50.0%	85.0%
Risk-free interest rate of return	1.5%	0.1%

The most recent remeasurement of the fair value of the incentive units was performed as of the end of fiscal year 2020 and the fair value of these awards was determined to be $86.3 million in aggregate, net of forfeitures. Based on the fair value of the incentive units as of the end of fiscal year 2020, we had $3.2 million of unrecognized share-based compensation expense related to the unvested and unearned portion of the incentive units.

The incentive units vest over periods ranging from 2.7 to 5.0 years from the date of grant. The share-based compensation expense and associated capital contribution for these awards is recognized over the vesting period as the awards are earned. During fiscal year 2018, we recorded a reduction of $38.3 million to share-based compensation expense, primarily due to a decline in the Torrid Holding LLC equity value. During fiscal years 2019 and 2020, we recognized share-based compensation expense of $12.0 million and $7.8 million, respectively. We recognize the impact of share-based compensation in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income.

As of February 1, 2020 and January 30, 2021, Torrid Holding LLC had 16.6 million and 13.7 million outstanding incentive units, respectively, and 3.5 million and 1.9 million of unvested incentive units, respectively, issued to our employees.

IPO Awards

We have entered into agreements with certain members of our management whereby if an IPO occurs during the employment of our Chief Executive Officer, Elizabeth Muñoz, ("CEO") and certain other members of our management, they are entitled to one-time grants of restricted stock units or restricted stock shares ("IPO Awards") in amounts equal to $3.8 million in the aggregate. With the exception of the CEO's agreement, the IPO Award agreements will expire if an IPO does not occur prior to the second anniversary of each date of the individual IPO Award agreements. 50% of the IPO Awards will be fully vested on date of grant, and the remaining 50% will vest in equal installments on the first, second and third anniversaries of the date of an IPO. These members of our management must remain employed by us through each vesting date in order to vest in the applicable portions of their IPO Awards. Consequently, we will recognize $1.9 million of share-based compensation expense related to these IPO Awards upon the consummation of an IPO with the remainder recognized over the three-year vesting period.

Note 15. Lease Incentives and Other Noncurrent Liabilities

Lease incentives and other noncurrent liabilities consist of the following (in thousands):

	February 1, 2020	January 30, 2021
Noncurrent portion of lease incentives	$ 1,772	$ 1,426
Noncurrent income taxes payable	1,655	2,447
Lease incentives and other noncurrent liabilities	$ 3,427	$ 3,873

Note 16. Commitments and Contingencies

Operating Lease Agreements

We have entered into operating lease agreements for retail, distribution and office space; and vehicles and equipment, under primarily non-cancelable leases with terms ranging from approximately two to seventeen years. Please refer to "Note 9 – Leases" for further discussion regarding our leases.

Litigation

On November 8, 2017, holders purporting to represent approximately 37% of Hot Topic's Notes ("Plaintiffs") filed a lawsuit in New York state court against Hot Topic, Torrid, and certain other persons ("Defendants"). The lawsuit alleged, among other matters, that the May 2015 sale by Hot Topic of Torrid LLC violated the Notes indenture. The Plaintiffs sought to void and unwind the separation of Torrid LLC or, in the alternative, monetary damages in an unspecified amount. On December 26, 2017, Torrid Holding LLC entered into a settlement agreement that we were a party to, with the Plaintiffs. In the settlement agreement, Torrid

Holding LLC agreed to guarantee the timely payment of all obligations under the then $340 million outstanding balance of the Notes. In addition, Torrid Holding LLC agreed to use any net after-tax proceeds it may have received in connection with an IPO or other public or private sale of equity interests in us to redeem the Notes at the redemption prices specified in the indenture. Hot Topic redeemed all of its Notes during the second quarter of fiscal year 2019.

From time to time, we are involved in other matters of litigation that arise in the ordinary course of business. Though significant litigation or awards against us could seriously harm our business and financial results, we do not at this time expect these other matters of litigation to have a material adverse effect on our overall financial condition.

Indemnities, Commitments and Guarantees

On August 27, 2018, we entered into an assumption and assignment agreement ("Agreement") with The Bon-Ton Department Stores, Inc. ("Assignor") and other parties to the Assignor's bankruptcy proceedings. Pursuant to the Agreement, on September 21, 2018, we assumed a real property lease for a distribution center located in West Jefferson, Ohio, and purchased approximately $12 million of property and equipment located within the leased property, from the Assignor.

On November 20, 2018, Hot Topic issued a notice of conditional partial redemption to redeem $75 million in aggregate principal amount of its Notes ("Notes Redemption"). The date for the Notes Redemption was December 20, 2018 ("Redemption Date") and was conditioned upon Hot Topic receiving net proceeds from an investment by our parent, Torrid Holding LLC, in an amount no less than $75 million, on or prior to the Redemption Date. Our parent made a $77 million investment in Hot Topic on the Redemption Date and we funded $61.4 million of the investment through a capital distribution to our parent. Hot Topic redeemed all of its Notes during the second quarter of fiscal year 2019.

During the ordinary course of business, we have made certain other indemnities, commitments and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include those given to various lessors in connection with facility leases for certain claims arising from such facility or lease and indemnities to our board of directors and officers to the maximum extent permitted. Commitments include those given to various merchandise vendors and suppliers. From time to time, we have issued guarantees in the form of standby letters of credit as security for workers' compensation claims. (Our letters of credit are discussed in more detail in "Note 12 – Debt Financing Arrangements"). The durations of these indemnities, commitments and guarantees vary. Some of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. We have not recorded any liability for these indemnities, commitments and guarantees in the accompanying consolidated financial statements as no demands have been made upon us to provide indemnification under such agreements and there are no claims that we are aware of that could have a material effect on our consolidated financial statements.

Note 17. Stockholder's Deficit

Torrid Parent Inc. was formed on June 4, 2019. Torrid Parent Inc. is authorized to issue 1,000 shares of common stock at $0.01 par value. Torrid Parent Inc. had 1,000 shares of common stock issued and outstanding upon formation. Historical periods prior to the formation of Torrid Parent Inc. have been revised to reflect our current capital structure.

Note 18. Fair Value Measurements

We carry certain of our assets and liabilities at fair value in accordance with GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Valuation techniques used to measure fair value require us to maximize the use of observable inputs and minimize the use of unobservable inputs. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Financial assets and liabilities carried at fair value are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs, other than Level 1 prices, such as quoted prices for similar assets or liabilities in active markets; quoted prices for similar assets or liabilities in markets that are not active; or other inputs other than quoted prices that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities, including interest rates and yield curves, and market corroborated inputs.

Level 3: Unobservable inputs for the asset or liability that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. These are valued based on our estimates and assumptions that market participants would use in pricing the asset or liability.

Financial assets and liabilities measured at fair value on a recurring basis as of the end of fiscal year 2019 consisted of the following (in thousands):

	February 1, 2020	Quoted Prices in Active Markets for Identical Items (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Money market funds (cash equivalent)	$ 17,858	$ 17,858	$ —	$ —
Total assets	$ 17,858	$ 17,858	$ —	$ —
Liabilities:				
Deferred compensation plan liability (noncurrent)	$ 5,215	$ —	$ 5,215	$ —
Total liabilities	$ 5,215	$ —	$ 5,215	$ —

Financial assets and liabilities measured at fair value on a recurring basis as of the end of fiscal year 2020 consisted of the following (in thousands):

	January 30, 2021	Quoted Prices in Active Markets for Identical Items (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Money market funds (cash equivalent)	$ 73,024	$ 73,024	$ —	$ —
Total assets	$ 73,024	$ 73,024	$ —	$ —
Liabilities:				
Deferred compensation plan liability (noncurrent)	$ 6,531	$ —	$ 6,531	$ —
Total liabilities	$ 6,531	$ —	$ 6,531	$ —

The fair value of our money market funds is based on quoted prices in active markets. The deferred compensation plan liability represents the amount that would be earned by participants if the funds were invested in securities traded in active markets. The fair value of the deferred compensation plan liability is determined based on quoted prices of similar assets that are traded in observable markets, or represents the cash withheld by participants prior to any investment activity.

Note 19. Subsequent Events

We have evaluated subsequent events through April 9, 2021, which is the date these consolidated financial statements were available to be issued.

On March 11, 2021, Hot Topic entered into a consulting services agreement with our CFO. Please refer to "Note 11 – Related Party Transactions" for further discussion regarding the consulting services agreement.

On March 11, 2021, the ARPA was signed into law. Please refer to "Note 1—Basis of Presentation and Description of the Business" for further discussion regarding the ARPA.

Note 20. Subsequent Events (Unaudited)

In connection with the reissuance of the financial statements, we have evaluated subsequent events through May 7, 2021, the date the financial statements were available to be reissued.

On May 6, 2021, the letter of support we received from Sycamore in September 2020 was terminated.

SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF THE REGISTRANT PARENT-COMPANY-ONLY CONDENSED BALANCE SHEETS
(in thousands)

	February 1, 2020	January 30, 2021
Assets		
Investment in subsidiary	$ (95,498)	$ (63,168)
Total assets	$ (95,498)	$ (63,168)
Liabilities and stockholder's deficit		
Total liabilities	$ —	$ —
Stockholder's deficit		
Additional paid-in capital	2,535	10,326
Accumulated deficit	(98,023)	(73,486)
Accumulated other comprehensive loss	(10)	(8)
Total stockholder's deficit	$ (95,498)	$ (63,168)
Total liabilities and stockholder's deficit	$ (95,498)	$ (63,168)

The accompanying notes are an integral part of these condensed financial statements.

SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF THE REGISTRANT PARENT-COMPANY-ONLY
CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (in thousands)

	February 1, 2020	January 30, 2021
Net Sales	$ —	$ —
Cost of goods sold	—	—
Gross profit	—	—
Selling, general and administrative expenses	—	—
Income from operations	—	—
Related party interest expense	—	—
Loss before benefit for income taxes	—	—
Benefit for income taxes	—	—
Equity gain in subsidiary	41,869	24,537
Net income	$ 41,869	$ 24,537
Comprehensive income:		
Net income	$ 41,869	$ 24,537
Other comprehensive loss:		
Foreign currency translation adjustment	(29)	2
Total other comprehensive loss	(29)	2
Comprehensive income	$ 41,840	$ 24,539

The accompanying notes are an integral part of these condensed financial statements.

SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF THE REGISTRANT PARENT-COMPANY-ONLY CONDENSED STATEMENTS OF CASH FLOWS
(in thousands)

	February 1, 2020	January 30, 2021
OPERATING ACTIVITIES		
Net income	$ 41,869	$ 24,537
Adjustments to reconcile net income to net cash used in operating activities:		
Equity gain in subsidiary	(41,869)	(24,537)
Net cash used in operating activities	—	—
FINANCING ACTIVITIES		
Contribution from subsidiary	256,417	—
Distribution to parent	(256,417)	—
Net cash provided by financing activities	—	—
(Decrease) increase in cash, cash equivalents and restricted cash	—	—
Cash, cash equivalents and restricted cash at beginning of period	—	—
Cash, cash equivalents and restricted cash at end of period	$ —	$ —
SUPPLEMENTAL DISCLOSURE OF NONCASH FINANCING ACTIVITIES		
Related party promissory note receivable in exchange for HT Intermediate Holdings Corp. preferred stock	$ 214,628	$ —

The accompanying notes are an integral part of these condensed financial statements.

SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF THE REGISTRANT PARENT-COMPANY-ONLY
NOTES TO CONDENSED FINANCIAL STATEMENTS

Note 1. Basis of Presentation

Torrid Parent Inc. is a Delaware corporation formed on June 4, 2019. Torrid Parent Inc. is a wholly owned subsidiary of Torrid Holding LLC, which is majority-owned by investment funds managed by Sycamore Partners Management, L.P. ("Sycamore"). Torrid Intermediate LLC, formerly known as Torrid Inc., is a Delaware limited liability company formed on June 18, 2019 and a wholly owned subsidiary of Torrid Parent Inc. Torrid LLC is a wholly owned subsidiary of Torrid Intermediate LLC.

The parent-company-only financial statements should be read in conjunction with the audited consolidated financial statements of Torrid Parent Inc. which are included elsewhere in this prospectus. For the periods prior to June 14, 2019, the parent-company-only financial statements are for Torrid Inc. (prior to its conversion to Torrid Intermediate LLC on June 18, 2019); and for the periods on and subsequent to June 14, 2019 (when Torrid Inc. became a wholly owned subsidiary of Torrid Parent Inc.), the parent-company-only financial statements are for Torrid Parent Inc. These parent-company-only financial statements exclude the operations of any of its directly owned subsidiaries, Torrid LLC and Torrid Intermediate LLC. For purposes of this condensed financial information, Torrid Inc.'s and Torrid Parent Inc.'s wholly-owned and majority-owned subsidiaries are recorded based upon their proportionate share of the subsidiaries' net assets (similar to presenting them using the equity method). Torrid Inc.'s and Torrid Parent Inc.'s investment in subsidiaries is stated at cost plus contributions from parent and earnings or losses from subsidiaries.

Note 2. Guarantees and Restrictions

In May 2015, Torrid LLC entered into a credit agreement for a senior secured asset-based revolving credit facility ("Original ABL Facility") of $50.0 million (subject to a borrowing base), with Bank of America, N.A. On October 23, 2017, Torrid LLC entered into an amended and restated credit agreement ("Existing ABL Facility"), which amended its Original ABL Facility. The Existing ABL Facility increased the aggregate commitments available under the Original ABL Facility from $50.0 million to $100.0 million (subject to a borrowing base); and increased Torrid LLC's right to request additional commitments from up to $30.0 million to up to $30.0 million plus the aggregate principal amount of any permanent principal reductions it may take (subject to customary conditions precedent). On June 14, 2019, in conjunction with the Term Loan Credit Agreement, Torrid LLC entered into an amendment to the Existing ABL Facility ("1st Amendment"). The 1st Amendment decreased the aggregate commitments available under the Existing ABL Facility from $100.0 million to $70.0 million (subject to a borrowing base), permitted indebtedness incurred pursuant to the Term Loan Credit Agreement and made certain other modifications. On September 4, 2019, Torrid LLC entered into another amendment to the Existing ABL Facility ("2nd Amendment"). The 2nd Amendment permitted parent company financial statements to be used to satisfy reporting requirements and made certain other modifications. Certain of Torrid LLC's domestic subsidiaries are co-borrowers with Torrid LLC under the Existing ABL Facility and the principal amount outstanding of the loans under the Existing ABL Facility are expected to be due and payable in full on October 23, 2022.

All obligations under the Existing ABL Facility are unconditionally guaranteed by substantially all of Torrid Intermediate LLC's existing majority-owned domestic subsidiaries and will be required to be guaranteed by certain of Torrid Intermediate LLC's future domestic majority-owned subsidiaries. All obligations under the Existing ABL Facility, and the guarantees of those obligations, will be secured, subject to certain exceptions, by substantially all of Torrid Intermediate LLC's assets. The Existing ABL Facility contains a number of covenants that, among other things and subject to certain exceptions, will restrict Torrid Intermediate LLC's ability and the ability of its subsidiaries to: incur additional indebtedness; pay dividends on Torrid Intermediate LLC's capital stock or redeem, repurchase or retire Torrid Intermediate LLC's capital stock or Torrid Intermediate LLC's other indebtedness; make investments, loans and acquisitions; sell assets, including capital stock of Torrid Intermediate LLC's subsidiaries; alter the business Torrid Intermediate LLC conducts; consolidate or merge; and incur liens. As of the end of fiscal year 2020, Torrid Intermediate LLC was compliant with its debt covenants under the Existing ABL Facility.

TORRID PARENT INC.
(PARENT OF TORRID INTERMEDIATE LLC, FORMERLY TORRID INC.)
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)
(In thousands, except share and per share data)

	January 30, 2021	May 1, 2021
Assets		
Current assets:		
Cash and cash equivalents	$ 122,953	$ 190,782
Restricted cash	262	262
Inventory	105,843	111,929
Prepaid expenses and other current assets	13,085	17,001
Total current assets	242,143	319,974
Property and equipment, net	143,256	137,735
Operating lease right-of-use assets	244,711	234,557
Deposits and other noncurrent assets	3,560	4,284
Deferred tax assets	6,139	6,167
Intangible asset	8,400	8,400
Total assets	$ 648,209	$ 711,117
Liabilities and stockholder's deficit		
Current liabilities:		
Accounts payable	$ 70,853	$ 87,032
Accrued and other current liabilities	110,361	113,914
Operating lease liabilities	50,998	45,816
Current portion of term loan	11,506	11,506
Due to related parties	8,055	7,625
Income taxes payable	9,336	19,846
Total current liabilities	261,109	285,739
Noncurrent operating lease liabilities	246,458	233,970
Term loan	193,406	190,530
Deferred compensation	6,531	7,190
Lease incentives and other noncurrent liabilities	3,873	3,941
Total liabilities	711,377	721,370
Commitments and contingencies (Note 15)		
Stockholder's deficit		
Common shares: $0.01 par value; 1,000 shares authorized; 1,000 shares issued and outstanding at January 30, 2021 and May 1, 2021	—	—
Additional paid-in capital	10,326	50,105
Accumulated deficit	(73,486)	(60,561)
Accumulated other comprehensive (loss) income	(8)	203
Total stockholder's deficit	(63,168)	(10,253)
Total liabilities and stockholder's deficit	$ 648,209	$ 711,117

The accompanying notes are an integral part of these condensed consolidated financial statements.

TORRID PARENT INC.
(PARENT OF TORRID INTERMEDIATE LLC, FORMERLY TORRID INC.)
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME
(UNAUDITED)
(In thousands, except share data)

	Three Months Ended May 2, 2020	Three Months Ended May 1, 2021
Net sales	$ 156,477	$ 325,747
Cost of goods sold	115,535	180,815
Gross profit	40,942	144,932
Selling, general and administrative expenses	6,858	109,913
Marketing expenses	14,036	9,525
Income from operations	20,048	25,494
Interest expense	6,094	4,624
Interest income, net of other expense (income)	133	(109)
Income before provision for income taxes	13,821	20,979
Provision for income taxes	1,552	8,054
Net income	$ 12,269	$ 12,925
Comprehensive income:		
Net income	$ 12,269	$ 12,925
Other comprehensive (loss) income:		
Foreign currency translation adjustment	(372)	211
Total other comprehensive (loss) income	(372)	211
Comprehensive income	$ 11,897	$ 13,136
Net earnings per share:		
Basic and diluted	$ 12	$ 13
Weighted average number of shares:		
Basic and diluted	1,000	1,000

The accompanying notes are an integral part of these condensed consolidated financial statements.

TORRID PARENT INC.
(PARENT OF TORRID INTERMEDIATE LLC, FORMERLY TORRID INC.)
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDER'S DEFICIT
(UNAUDITED)
(In thousands, except share data)

	Three Months Ended May 2, 2020					
	Common Shares					
	Shares	Amount	Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Stockholder's Deficit
Balance at February 1, 2020	1,000	$ 10	$ 2,535	$ (98,023)	$ (10)	$ (95,498)
Net income	—	—	—	12,269	—	12,269
Capital distribution to Torrid Holding LLC for incentive units	—	—	(2,535)	(35,980)	—	(38,515)
Other comprehensive loss	—	—	—	—	(372)	(372)
Balance at May 2, 2020	1,000	$ 10	$ —	$ (121,734)	$ (382)	$ (122,116)

	Three Months Ended May 1, 2021					
	Common Shares					
	Shares	Amount	Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Stockholder's Deficit
Balance at January 30, 2021	1,000	$ 10	$ 10,326	$ (73,486)	$ (8)	$ (63,168)
Net income	—	—	—	12,925	—	12,925
Capital contribution from Torrid Holding LLC for incentive units	—	—	39,779	—	—	39,779
Other comprehensive income	—	—	—	—	211	211
Balance at May 1, 2021	1,000	$ 10	$ 50,105	$ (60,561)	$ 203	$ (10,253)

The accompanying notes are an integral part of these condensed consolidated financial statements.

TORRID PARENT INC.
(PARENT OF TORRID INTERMEDIATE LLC, FORMERLY TORRID INC.)
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(In thousands)

	Three Months Ended May 2, 2020	Three Months Ended May 1, 2021
OPERATING ACTIVITIES		
Net income	$ 12,269	$ 12,925
Adjustments to reconcile net income to net cash provided by operating activities:		
Write down of inventory	1,144	286
Operating right-of-use assets amortization	9,975	10,234
Depreciation and other amortization	8,741	8,966
Share-based compensation	(38,515)	39,779
Deferred taxes	496	(28)
Other	263	(878)
Changes in operating assets and liabilities:		
Inventory	(39,384)	(6,181)
Prepaid expenses and other current assets	5,174	(3,916)
Deposits and other noncurrent assets	(23)	(748)
Accounts payable	62,925	15,273
Accrued and other current liabilities	(16,807)	4,614
Operating lease liabilities	(2,198)	(17,307)
Lease incentives and other noncurrent liabilities	(294)	76
Deferred compensation	(293)	659
Due to related parties	2,959	(430)
Income taxes payable	760	10,510
Net cash provided by operating activities	7,192	73,834
INVESTING ACTIVITIES		
Purchases of property and equipment	(6,076)	(2,786)
Net cash used in investing activities	(6,076)	(2,786)
FINANCING ACTIVITIES		
Proceeds from revolving credit facility	50,000	—
Principal payments on term loan	(1,950)	(3,250)
Net cash provided by (used in) financing activities	48,050	(3,250)
Effect of foreign currency exchange rate changes on cash, cash equivalents and restricted cash	(151)	31
Increase in cash, cash equivalents and restricted cash	49,015	67,829
Cash, cash equivalents and restricted cash at beginning of period	28,999	123,215
Cash, cash equivalents and restricted cash at end of period	$ 78,014	$ 191,044
SUPPLEMENTAL INFORMATION		
Cash paid during the period for interest related to the credit facility and term loan	$ 5,967	$ 4,301
Cash paid during the period for income taxes	$ 9	$ 375
SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES		
Property and equipment purchases included in accounts payable and accrued liabilities	$ 3,490	$ 1,322

The accompanying notes are an integral part of these condensed consolidated financial statements.

TORRID PARENT INC.
(PARENT OF TORRID INTERMEDIATE LLC, FORMERLY TORRID INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Note 1. Basis of Presentation and Description of the Business

Corporate Structure

Torrid Parent Inc. is a Delaware corporation formed on June 4, 2019. Torrid Parent Inc. is a wholly owned subsidiary of Torrid Holding LLC, or parent, which is majority-owned by investment funds managed by Sycamore Partners Management, L.P. ("Sycamore"). Torrid Intermediate LLC, formerly known as Torrid Inc., is a Delaware limited liability company formed on June 18, 2019 and a wholly owned subsidiary of Torrid Parent Inc. Torrid LLC is a wholly owned subsidiary of Torrid Intermediate LLC.

Contribution of Torrid Inc.'s Issued and Outstanding Equity Interests to Torrid Parent Inc.

On June 14, 2019, before Torrid Inc. became Torrid Intermediate LLC, Torrid Holding LLC, Torrid Inc.'s then-parent, entered into a contribution agreement ("Contribution Agreement") with Torrid Parent Inc. Pursuant to the Contribution Agreement, Torrid Holding LLC contributed, assigned, transferred and delivered its issued and outstanding equity interests in Torrid Inc. to Torrid Parent Inc. As a result, Torrid Inc. ceased to be a wholly owned subsidiary of Torrid Holding LLC and became a wholly owned subsidiary of Torrid Parent Inc. The Contribution Agreement was accounted for in accordance with subsections of Accounting Standards Codification ("ASC") 805-50, *Business Combinations* ("ASC 805-50"), related to transactions between entities under common control. Consequently, the equity interests of Torrid Inc. contributed by Torrid Holding LLC to Torrid Parent Inc. were recorded at its historical carrying amounts. The contribution of Torrid Inc.'s issued and outstanding equity interests to Torrid Parent Inc. resulted in an increase in the number of shares outstanding from one to 1,000. Stockholder's deficit is retrospectively presented for all periods using the capital structure of Torrid Parent Inc.

Throughout these financial statements, the terms "Torrid," "we," "us," "our," the "Company" and similar references refer to Torrid Inc. and its consolidated subsidiaries for the periods prior to the formation of Torrid Parent Inc. on June 4, 2019 and refer to Torrid Parent Inc. and its consolidated subsidiaries for the periods on and after the formation of Torrid Parent Inc.

Fiscal Year

Our fiscal year ends on the Saturday nearest to January 31 and each fiscal year is generally comprised of four 13-week quarters (although in years with 53 weeks, the fourth quarter is comprised of 14 weeks). Fiscal years 2020 and 2021 are 52-week years. Fiscal years are identified according to the calendar year in which they begin. For example, references to "fiscal year 2021" or similar references refer to the fiscal year ending January 29, 2022. References to the first quarter of fiscal years 2020 and 2021 and to the three-month periods ended May 2, 2020 and May 1, 2021, respectively, refer to the 13-week periods then ended.

Principles of Consolidation

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and Article 10 of Regulation S-X. Accordingly, the interim financial statements do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair statement of the results for the interim periods presented have been included. Operating results for the three-month periods ended May 2, 2020 and May 1, 2021 are not necessarily indicative of the results that may be expected for any future interim periods, the fiscal year ending January 29, 2022, or for any future year.

The condensed consolidated balance sheet information at January 30, 2021 has been derived from the audited consolidated financial statements at that date, but does not include all of the disclosures required by GAAP. The accompanying unaudited interim condensed consolidated financial statements and related footnotes should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended January 30, 2021. The unaudited interim condensed consolidated financial statements include Torrid and those of our wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

Description of Business

We are a direct-to-consumer brand of apparel, intimates and accessories targeting the 25- to 40-year-old woman who is curvy and wears sizes 10 to 30. We generate revenues primarily through our e-Commerce platform www.torrid.com and our stores in the United States of America, Puerto Rico and Canada.

COVID-19

In March 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic, which continues to spread throughout the United States and globally. The COVID-19 health crisis poses significant and widespread risks to our business as well as to the business environment and the markets in which we operate. In response to the public health crisis posed by COVID-19, individual states across the United States, including California where our headquarters are located, imposed a variety of regulatory restrictions including stay-at-home requirements. Consequently, we temporarily closed our headquarters and all retail store locations on March 17, 2020. In response to the impact of COVID-19, in March 2020, we implemented a number of precautionary measures to minimize cash outlays. These precautionary measures included managing workforce costs, delaying planned capital expenditures, including store openings, minimizing discretionary expenses and deferring lease payments while we negotiate concessions for certain of our retail locations. Please refer to "Note 8—Leases" for further discussion regarding these lease concessions. On May 15, 2020, we began to reopen our retail store locations in phases. Our decision to reopen retail store locations is affected by a number of factors including applicable regulatory restrictions. As of August 1, 2020, all of our retail store locations impacted by COVID-19 had reopened subject to local and state restrictions including limited hours and curbside order pick-up for certain locations. While our retail store locations were closed, we continued to serve customers virtually through our Torrid app and online at www.torrid.com.

In addition to our planned closures and reopenings, we have had to unexpectedly close some of our physical locations for brief periods of time in response to COVID-19 exposures. We may face new closure requirements with respect to some or all of our physical locations for prolonged periods of time due to, among other factors, evolving federal, state and local restrictions and shelter-in-place orders. Even though we have reopened our physical locations, changes in consumer behavior and health concerns may continue to impact customer traffic at our retail locations and may make it more difficult for us to staff these locations.

Our business operations, including net sales, were substantially affected by COVID-19 in the prior year and the extent of future impacts of COVID-19 on our business, including the duration and impact on overall customer demand, is uncertain as current circumstances are dynamic and depend on future developments, including, but not limited to, the duration and spread of COVID-19, the emergence of new variants of the coronavirus and the availability and acceptance of effective vaccines or medical treatments.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was signed into law, and has resulted in significant changes to the U.S. federal corporate tax law. The CARES Act provides numerous tax provisions and other stimulus measures, including temporary changes regarding the prior and future utilization of net operating losses, temporary changes to the prior and future limitations on interest deductions, temporary suspension of certain payment requirements for the employer portion of Social Security taxes, technical corrections from prior tax legislation for tax depreciation of certain qualified improvement

property, and the creation of certain refundable employee retention credits. Additionally, several state and foreign jurisdictions have enacted additional legislation to comply with federal changes. On December 27, 2020, the Consolidated Appropriations Act ("CAA") was enacted in further response to the COVID-19 pandemic. The CAA, among other things, revised certain tax measures enacted under the CARES Act, such as the deductibility of payroll tax credits, charitable contributions for corporate taxpayers, certain meals and entertainment expenses paid or incurred in calendar years 2021 and 2022, and employment retention credit claims. On March 11, 2021, the American Rescue Plan Act ("ARPA") was signed into law with additional funding for COVID-19 pandemic relief. The ARPA includes the expansion of employment retention credit claims and other pandemic funding provisions. We have considered the applicable CARES Act, CAA and ARPA tax law changes in our tax provision for the period ended May 1, 2021 and continue to evaluate the impact of these tax law changes on future periods.

Segment Reporting

We have determined that we have one reportable segment, which includes the operation of our e-Commerce platform and stores. The single segment was identified based on how the Chief Operating Decision Maker, who we have determined to be our Chief Executive Officer, manages and evaluates performance and allocates resources. Revenues and long-lived assets related to our operations in Canada and Puerto Rico during the three-month periods ended May 2, 2020 and May 1, 2021, and as of the end of the same periods, were not material, and therefore are not reported separately from domestic revenues and long-lived assets.

Store Pre-Opening Costs

Costs incurred in connection with the opening of new stores, store remodels or relocations are expensed as incurred in selling, general and administrative expenses in our condensed consolidated statements of operations and comprehensive income. We incurred $0.1 million of pre-opening costs during the three-month period ended May 2, 2020. During the three-month period ended May 1, 2021, the amounts incurred were not material.

Note 2. Accounting Standards

Recently Adopted Accounting Standards during the Three-Month Period Ended May 1, 2021

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2019-12, *Simplifying the Accounting for Income Taxes.* The ASU is intended to enhance and simplify aspects of the income tax accounting guidance in ASC 740 as part of the FASB's simplification initiative. This guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2020 with early adoption permitted. Our adoption of this guidance on January 31, 2021 did not have a material impact on our condensed consolidated financial position or results of operations.

Note 3. Inventory

Inventory is valued at the lower of moving average cost or net realizable value. We make certain assumptions regarding net realizable value in order to assess whether our inventory is recorded properly at the lower of cost or net realizable value. These assumptions are based on historical average selling price experience, current selling price information and estimated future selling price information. Physical inventory counts are conducted at least once during the year to determine actual inventory on hand and shrinkage. We accrue our estimated inventory shrinkage for the period between the last physical count and current balance sheet date.

Note 4. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

	January 30, 2021	May 1, 2021
Prepaid income taxes	$ 417	$ 3,478
Prepaid and other information technology expenses	3,202	5,390
Prepaid advertising	1,241	1,411
Other	8,225	6,722
Prepaid expenses and other current assets	$ 13,085	$ 17,001

Note 5. Property and Equipment

Property and equipment are summarized as follows (in thousands):

	January 30, 2021	May 1, 2021
Property and equipment, at cost		
Leasehold improvements	$ 161,817	$ 162,149
Furniture, fixtures and equipment	98,753	99,879
Software and licenses	15,121	15,243
Construction-in-progress	3,266	4,885
	278,957	282,156
Less: Accumulated depreciation and amortization	(135,701)	(144,421)
Property and equipment, net	$ 143,256	$ 137,735

We recorded depreciation expense related to our property and equipment in the amounts of $8.4 million and $8.6 million during the three-month periods ended May 2, 2020 and May 1, 2021, respectively.

We group and evaluate long-lived assets for impairment at the individual store level, which is the lowest level at which individual cash flows can be identified. During the three-month periods ended May 2, 2020 and May 1, 2021, we did not recognize any impairment charges.

Note 6. Implementation Costs Incurred in Cloud Computing Arrangements that are Service Contracts

Our cloud computing arrangements that are service contracts primarily consist of arrangements with third party vendors for our internal use of their software applications that they host. We defer implementation costs incurred in relation to such arrangements, including costs for software application coding, configuration, integration and customization, while associated process reengineering, training, maintenance and data conversion costs are expensed. Subsequent implementation costs are deferred only to the extent that they constitute major enhancements. The short-term portion of deferred implementation costs are included in prepaid expenses and other current assets in the condensed consolidated balance sheets, while the long-term portion of deferred costs are included in deposits and other noncurrent assets. Amortized implementation costs incurred in cloud computing arrangements that are service contracts are recognized in selling, general and administrative expenses in the condensed consolidated statements of operations and comprehensive income.

Deferred implementation costs incurred in cloud computing arrangements that are service contracts are summarized as follows (in thousands):

	January 30, 2021	May 1, 2021
Internal use of third party hosted software, gross	$ 6,095	$ 7,242
Less: Accumulated amortization	(2,245)	(2,524)
Internal use of third party hosted software, net	$ 3,850	$ 4,718

During the three-month periods ended May 2, 2020 and May 1, 2021, we amortized approximately $0.3 million and $0.3 million, respectively, of implementation costs incurred in cloud computing arrangements that are service contracts.

Note 7. Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	January 30, 2021	May 1, 2021
Accrued payroll and related expenses	$ 25,638	$ 27,996
Accrued inventory-in-transit	21,749	18,042
Accrued loyalty program	12,344	13,401
Accrued sales return allowance	3,863	9,080
Gift cards	9,361	8,078
Deferred revenue	1,512	2,069
Accrued sales and use tax	5,615	6,172
Accrued freight	4,937	6,010
Term loan interest payable	3,311	3,215
Accrued marketing	4,696	3,175
Accrued self-insurance liabilities	2,868	2,762
Other	14,467	13,914
Accrued and other current liabilities	$ 110,361	$ 113,914

Note 8. Leases

Our lease costs reflected in the tables below include minimum base rents, common area maintenance charges and heating, ventilation and air conditioning charges. We recognize such lease costs in the applicable expense category in either cost of goods sold, or selling, general and administrative expenses in the condensed consolidated statements of operations and comprehensive income.

Our lease costs during the three-month periods ended May 2, 2020 and May 1, 2021 consist of the following (in thousands):

	Three Months Ended	
	May 2, 2020	May 1, 2021
Operating (fixed) lease cost	$ 14,467	$ 13,118
Short-term lease cost	32	10
Variable lease cost	4,358	4,760
Total lease cost	$ 18,857	$ 17,888

In response to the COVID-19 pandemic, the FASB issued interpretive guidance in April 2020, which provides entities the option to elect to account for lease concessions as though the enforceable rights and obligations existed in the original lease terms. We elected this option; accordingly, we do not remeasure the lease liabilities or record a change to the right-of-use ("ROU") assets for any concessions we receive for our retail store leases. Rather, deferred lease payments are recorded to operating lease liabilities until paid and lease concessions are recorded in the period they are negotiated or when the lower lease expense is paid.

As of the end of the first quarter of fiscal year 2021, we recorded deferred fixed lease payments of $3.0 million in current operating lease liabilities in the condensed consolidated balance sheets. During the three-month period ended May 1, 2021, we recorded a reduction to lease costs of $0.3 million, as a result of negotiated lease concessions.

Other supplementary information related to our leases is reflected in the table below (in thousands except lease term and discount rate data):

	Three Months Ended May 1, 2021
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows for operating leases	$ 16,333
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 715
Decrease in right-of-use assets resulting from operating lease modifications or remeasurements	$ (885)
Weighted average remaining lease term - operating leases	6 years
Weighted average discount rate - operating leases	6%

Note 9. Revenue Recognition

We recognize revenue when our performance obligations under the terms of a contract or an implied arrangement with a customer are satisfied, which is when the merchandise is transferred to the customer and the customer obtains control of it. The amount of revenue we recognize reflects the total consideration we expect to receive for the merchandise, which is the transaction price.

Our revenue, disaggregated by product category, consists of the following (in thousands):

	Three Months Ended	
	May 2, 2020	May 1, 2021
Apparel	$ 143,560	$ 301,117
Non-apparel	12,917	24,630
Total net sales	$ 156,477	$ 325,747

Amounts within Apparel include revenues earned from the sale of tops, bottoms, dresses, intimates, sleep wear, swim wear and outerwear. Amounts within Non-apparel include revenues earned from the sale of accessories, footwear and beauty.

We recognize a contract liability when we receive consideration from a customer before our performance obligations under the terms of a contract or an implied arrangement with the customer are satisfied. During the three-month period ended May 2, 2020, we recognized revenue of approximately $4.7 million and $2.2 million related to our accrued loyalty program and gift cards, respectively, that existed at the beginning of fiscal year 2020. During the three-month period ended May 1, 2021, we recognized revenue of approximately $7.3 million and $2.7 million related to our accrued loyalty program and gift cards, respectively, that existed at the beginning of fiscal year 2021.

Note 10. Loyalty Program

On July 22, 2019, we relaunched our loyalty program, Torrid Rewards, in all our stores and on www.torrid.com. Under this program, customers accumulate points based on purchase activity and qualifying non-purchase activity and upon reaching a certain point level, customers can earn awards that may only be redeemed for merchandise. Unredeemed points typically expire after 13 months without additional purchase and qualifying non-purchase activity and unredeemed awards typically expire 45 days after issuance. We use historical redemption rates to estimate the value of future award redemptions and we recognize the estimated value of these future awards as a reduction of revenue in the condensed consolidated statements of operations and comprehensive income in the period the points are earned by the customer. Prior to the relaunch of the Torrid Rewards loyalty program, we operated our Torrid Insider loyalty program under which customers accumulated

points based on purchase activity only. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, we had $12.3 million and $13.4 million, respectively, in deferred revenue related to our loyalty programs included in accrued and other current liabilities in the condensed consolidated balance sheets. During the three-month periods ended May 2, 2020 and May 1, 2021, we recorded $1.6 million and $1.1 million, respectively, as a reduction of net sales. Future revisions to the estimated liability may result in changes to net sales.

Note 11. Related Party Transactions

Services Agreements with Hot Topic

From June 2, 2017 until its termination on March 21, 2019, we had a services agreement ("Third Party Services Agreement") with Hot Topic, pursuant to which Hot Topic provided us (or caused applicable third parties to provide) certain services, including information technology, distribution and logistics management, real estate leasing and construction management and other services as may have been specified. On March 21, 2019, we entered into an amended and restated services agreement ("Amended and Restated Services Agreement") with Hot Topic under which Hot Topic provides us (or causes applicable third parties to provide) substantially similar services to those provided under the Third Party Services Agreement. The term of the Amended and Restated Services Agreement is three years, unless we or Hot Topic extend the agreement, or we terminate the agreement (or certain services under the agreement). We may terminate the various services upon written notice. Rates and costs related to the services provided under the Amended and Restated Services Agreement may change with approval from both parties. Each month, we are committed to pay Hot Topic for these services and reimburse Hot Topic for certain costs it incurs in the course of providing these services. We record payments made to Hot Topic under these service agreements in the applicable expense category in either cost of goods sold, or selling, general and administrative expenses. On August 1, 2019, in connection with the IT Asset Purchase Agreement (as defined below), we entered into a services agreement ("Reverse Services Agreement") with Hot Topic, under which Torrid provides Hot Topic with certain information technology services. The term of the Reverse Services Agreement is three years, unless we or Hot Topic extend the agreement, or Hot Topic terminates the agreement. Torrid provides Hot Topic with the specified information technology services at no cost for the first three years of the Reverse Services Agreement, however Hot Topic bears certain capital and operating expenses that it incurs. Costs incurred in connection with providing the specified information technology services to Hot Topic are expensed as incurred in our condensed consolidated statements of operations and comprehensive income. During the three-month periods ended May 2, 2020 and May 1, 2021, we incurred costs of $0.7 million and $0.9 million, respectively, in connection with providing these information technology services to Hot Topic. In connection with the Reverse Services Agreement, we entered into an amendment to the Amended and Restated Services Agreement ("Amendment to Amended and Restated Services Agreement") with Hot Topic on August 1, 2019, pursuant to which sections pertaining to Hot Topic's provision of information technology services to Torrid were removed.

During the three-month periods ended May 2, 2020 and May 1, 2021, Hot Topic charged us $3.7 million and $1.9 million, respectively, for various services under the applicable services agreements, of which $3.1 million and $1.3 million, respectively, were recorded as components of cost of goods sold, and the remaining $0.6 million and $0.6 million, respectively, were recorded as selling, general and administrative expenses. As of the end of fiscal year 2020, we did not owe any amount to Hot Topic for these services, and as of the end of the first quarter of fiscal year 2021, we owed $0.6 million to Hot Topic for these services.

Hot Topic incurs certain direct expenses on our behalf, such as payments to our non-merchandise vendors and each month, we pay Hot Topic for these pass-through expenses. As of the end of fiscal year 2020, we had prepaid Hot Topic $0.4 million for these expenses, which were included in prepaid expenses and other current assets in our condensed consolidated balance sheets. As of the end of the first quarter of fiscal year 2021, the net amount we owed Hot Topic for these expenses was $1.2 million, which are included in due to related parties in our condensed consolidated balance sheets.

IT Asset Purchase Agreement with Hot Topic

On June 14, 2019, we entered into an asset purchase agreement ("IT Asset Purchase Agreement") with Hot Topic pursuant to which we purchased certain information technology assets from Hot Topic for $29.5 million on August 1, 2019. Funds obtained from the Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") were used to make the purchase. We accounted for the purchase in accordance with subsections of ASC 805-50, related to transactions between entities under common control. Consequently, we recorded the information technology assets we purchased from Hot Topic at their historical carrying amounts totaling $3.5 million and recognized the difference between the historical carrying amounts and the purchase price in equity. In addition, certain information technology-related obligations and personnel, along with associated assets of $1.4 million and liabilities of $0.1 million, were transferred from Hot Topic to Torrid. In connection with the IT Asset Purchase Agreement, we and Hot Topic agreed to enter into the Reverse Services Agreement and Amendment to Amended and Restated Services Agreement upon the closing date of the IT Asset Purchase Agreement, which was August 1, 2019.

Promissory Notes Receivable from Parent

From time to time, our parent issues promissory notes receivable to us. Due to the nature of these promissory notes receivable, we consider them to be in-substance distributions to our parent and account for them as contra-equity in accordance with ASC 310, *Receivables*. Consequently, these promissory notes receivable are reflected within equity in our condensed consolidated balance sheets as reductions in additional paid-in capital, within capital distribution to Torrid Holding LLC, net of contribution, in our condensed consolidated statements of stockholder's deficit, and within capital distribution to Torrid Holding LLC, net of contribution, in our condensed consolidated statements of cash flows as financing cash outflows. Associated interest due to us will be recorded as equity when actual interest payments are made.

On December 20, 2018, our parent issued a $61.4 million promissory note to us in exchange for cash, due on or before December 20, 2024 ("$61.4M Related Party Promissory Note Receivable"). The funds realized from the $61.4M Related Party Promissory Note Receivable were invested by our parent in HTI (as defined below) and used by HTI (as defined below) and Hot Topic for the partial redemption of Hot Topic's 9.25% senior secured notes ("Notes"). The $61.4M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 3.06% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $61.4 million lump sum principal payment due to us upon the December 20, 2024 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $4.0 million and $4.5 million, respectively.

On June 6, 2019, our parent issued a $20.0 million promissory note to us in exchange for cash, due on or before June 6, 2025 ("$20M Related Party Promissory Note Receivable"). The $20M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.78% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $20.0 million lump sum principal payment due to us upon the June 6, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $0.9 million and $1.1 million, respectively.

On June 14, 2019, our parent issued a $10.0 million promissory note to us in exchange for cash, due on or before June 14, 2025 ("$10M Related Party Promissory Note Receivable"). The $10M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 2.78% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $10.0 million lump sum principal payment due to us upon the June 14, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $0.5 million.

On July 31, 2019, our parent issued a $214.6 million promissory note to us, due on or before July 31, 2025 ("$214.6M Related Party Promissory Note Receivable"). The $214.6M Related Party Promissory Note

Receivable was issued to us in exchange for the $213.2 million investment we made in HTI (as defined below) on June 14, 2019 plus the associated $1.4 million interest due to us through July 31, 2019. The $214.6M Related Party Note Receivable accrues interest at an annual compounding rate of 1.87% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $214.6 million lump sum principal payment due to us upon the July 31, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $6.1 million and $7.1 million, respectively.

On August 1, 2019, our parent issued a $1.2 million promissory note to us in exchange for cash, due on or before August 1, 2025 ("$1.2M Related Party Promissory Note Receivable"). The $1.2M Related Party Promissory Note Receivable was issued to us in exchange for purchasing $1.2 million of senior participating preferred stock from HTI (as defined below) on behalf of our parent. The $1.2M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.87% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $1.2 million lump sum principal payment due to us upon the August 1, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was not material.

On November 26, 2019, our parent issued a $12.0 million promissory note to us in exchange for cash, due on or before November 26, 2025 ("$12M Related Party Promissory Note Receivable"). The $12M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.59% upon its maturity. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there was a $12.0 million lump sum principal payment due to us upon the November 26, 2025 maturity date. The total amount of interest our parent owed us as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $0.2 million and $0.3 million, respectively.

As of the end of the first quarter of fiscal year 2021, no principal or interest payments had been made to us by our parent.

Sponsor Advisory Services Agreement

On May 1, 2015, we entered into an advisory services agreement with Sycamore, pursuant to which Sycamore agreed to provide strategic planning and other related services to us. We are obligated to reimburse Sycamore for its expenses incurred in connection with providing such advisory services to us. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, there were no amounts due, and during the three-month periods ended May 2, 2020 and May 1, 2021, no amounts were paid under this agreement.

From time to time, we reimburse Sycamore for certain management expenses it pays on our behalf. During the three-month periods ended May 2, 2020 and May 1, 2021, we did not make any reimbursements to Sycamore. As of the end of fiscal year 2020, there was no amount due, and as of the end of the first quarter of fiscal year 2021, the amount due was not material.

Other Related Party Transactions

On June 14, 2019, we used funds obtained from the Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") to purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp. ("HTI"). HTI used the funds it received from us to redeem its Notes. We accounted for the purchase under the cost method in accordance with ASC 325, *Investments—Other*. On July 31, 2019, our parent issued the $214.6M Related Party Promissory Note Receivable to us in exchange for our $213.2 million investment in HTI's senior participating preferred stock, including $1.4 million of accrued interest. Due to the nature of this $214.6M Related Party Promissory Note Receivable, we consider it to be an in-substance distribution to our parent and account for it as contra-equity.

MGF Sourcing US, LLC, an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were $8.8 million and $16.9 million, respectively. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, the net amounts we owed MGF for these purchases were $8.0 million and $5.6 million, respectively. This liability is included in due to related parties in our condensed consolidated balance sheets.

HU Merchandising, LLC, a subsidiary of Hot Topic, is one of our suppliers. During the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were $0.1 million and $0.2 million, respectively. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, the amounts due to HU Merchandising, LLC were $0.1 million and $0.2 million, respectively.

Staples, Inc., an entity indirectly controlled by affiliates of Sycamore, is one of our suppliers. During the three-month periods ended May 2, 2020 and May 1, 2021, purchases from this supplier were not material. As of the end of fiscal year 2020, the amount due to Staples, Inc. was not material and as of the end of the first quarter of fiscal year 2021, there was no amount due.

In April 2020, we received a letter of support from Sycamore for up to $20.0 million of additional equity funding, which, if necessary and sufficient, would be provided to further prevent noncompliance with the financial covenants in the Amended Term Loan Credit Agreement (as defined in "Note 12—Debt Financing Arrangements") through May 2021. In September 2020, we received an updated letter of support from Sycamore extending the equity funding commitment of up to $20.0 million, if necessary and sufficient, through January 2022. Subsequent to the end of the first quarter of fiscal year 2021, the letter of support was terminated as of May 6, 2021.

In March 2021, Hot Topic entered into a consulting services agreement with our Chief Financial Officer, George Wehlitz, Jr. ("CFO"), pursuant to which Hot Topic agreed to pay our CFO a consulting fee of $10,000 per month. The agreement was effective from January 3, 2021 and remained effective until May 31, 2021.

Note 12. Debt Financing Arrangements

Our debt financing arrangements consist of the following (in thousands):

	January 30, 2021	May 1, 2021
Existing ABL Facility, as amended	$ —	$ —
Term loan		
Term loan	210,700	207,450
Less: current portion of unamortized original issue discount and debt financing costs	(1,494)	(1,494)
Less: noncurrent portion of unamortized original issue discount and debt financing costs	(4,294)	(3,920)
Total term loan outstanding, net of unamortized original issue discount and debt financing costs	204,912	202,036
Less: current portion of term loan, net of unamortized original issue discount and debt financing costs	(11,506)	(11,506)
Total term loan, net of current portion and unamortized original issue discount and debt financing costs	$ 193,406	$ 190,530

Fixed mandatory principal repayments due on the outstanding term loan are as follows as of the end of the first quarter of fiscal year 2021 (in thousands):

2021	9,750
2022	16,250
2023	19,500
2024	161,950
	$ 207,450

Term Loan Credit Agreement

On June 14, 2019, we entered into a term loan credit agreement ("Term Loan Credit Agreement") with Cortland Capital Market Services LLC, as agent, KKR Credit Advisors (US) LLC, as structuring advisor, and the lenders party thereto (the "Lenders"). On September 17, 2020, we entered into an amended term loan credit agreement ("Amended Term Loan Credit Agreement") with the Lenders, pursuant to which the definition of total debt used in the calculation of Total Net Leverage Ratio (as defined below) was amended. All other material terms of the Term Loan Credit Agreement remain substantially the same. In September 2020, in conjunction with the Amended Term Loan Credit Agreement, we prepaid $35.0 million of the outstanding Principal (as defined below), associated accrued interest of $0.2 million and an amendment fee of $0.5 million.

The Amended Term Loan Credit Agreement provides for term loans in an initial aggregate amount of $260.0 million ("Principal"), which is recorded net of an original issue discount ("OID") of $2.9 million and has a maturity date of December 14, 2024. In connection with the Term Loan Credit Agreement, we paid financing costs of approximately $4.6 million.

The $257.1 million proceeds of the Term Loan Credit Agreement, net of OID, were used to i) purchase $213.2 million of senior participating preferred stock from Hot Topic's parent, HT Intermediate Holdings Corp., for which we subsequently received a promissory note receivable in exchange from our parent; ii) purchase certain information technology assets from Hot Topic for $29.5 million; iii) make a $10.0 million distribution to our parent; and iv) pay for financing costs associated with the Term Loan Credit Agreement.

Loans made pursuant to the Amended Term Loan Credit Agreement bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate quoted by The Wall Street Journal, (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month, plus 1.00% or (b) at a LIBOR rate for the interest period relevant to such borrowing, in each case plus an applicable margin of either 6.75% or 7.00% for LIBOR borrowings of either 5.75% or 6.00% for base rate borrowings, in each case, based upon our total net leverage ratio as of the relevant testing date.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we elect the Base rate loan, interest is due and payable the last day of each fiscal quarter. The elected interest rate on May 1, 2021 was approximately 8%.

In addition to paying interest on the outstanding Principal under the Amended Term Loan Credit Agreement, we are required to make fixed mandatory repayments of the Principal on the last business day of each fiscal quarter until maturity ("Repayment"). Repayments for the first four fiscal quarters, starting in the third quarter of fiscal year 2019, represent 0.75% of the Principal, reduced as a result of the application of prior Prepayments (as defined below). For each of the eight fiscal quarters thereafter, Repayments represent 1.25% of the Principal, reduced as a result of the application of prior Prepayments (as defined below). For each of the 10 fiscal quarters thereafter until the maturity date, Repayments represent 1.875% of the Principal, reduced as a result of the application of prior Prepayments (as defined below).

Under the Amended Term Loan Credit Agreement, we are also required to make variable mandatory prepayments of the Principal, under certain conditions as described below, approximately 102 days after the end of each fiscal year (each, a "Prepayment"). Prepayments, if applicable, commence at the end of fiscal year 2019 and represent between 25% and 75% (depending on our first lien net leverage ratio) of Excess Cash Flow (as defined in the Amended Term Loan Credit Agreement) in excess of $2.0 million, minus prepayments of Principal, the Existing ABL Facility, as amended (as defined below), (to the extent accompanied by a permanent reduction in the commitments thereunder) and certain other specified indebtedness and amounts in connection with certain other enumerated items. As of the end of fiscal year 2020, our Excess Cash Flow amount was $2.0 million, which did not meet the Excess Cash Flow threshold to require a Prepayment.

In addition to mandatory Repayment and Prepayment obligations, we may at our option, prepay a portion of the outstanding Principal ("Optional Prepayment"). If we make Optional Prepayments before June 14, 2022, we will be subject to penalties ranging from 1.00% to 3.00% of the aggregate principal amount, with the exception of up to $50.0 million that may be repaid with the proceeds of a qualifying initial public offering ("IPO") without penalty.

All of Torrid LLC's existing domestic subsidiaries and Torrid Intermediate LLC unconditionally guarantee all obligations under the Amended Term Loan Credit Agreement. Substantially all of the assets of Torrid LLC, Torrid LLC's existing subsidiaries and Torrid Intermediate LLC will secure all such obligations and the guarantees of those obligations, subject to certain exceptions.

Our borrowings under the Amended Term Loan Credit Agreement are subject to a financial covenant that requires us to maintain a maximum ratio of our total debt to Adjusted EBITDA (as defined in the Amended Term Loan Credit Agreement) ("Total Net Leverage Ratio"). The maximum ratio is 3.60 for the quarter ended November 2, 2019, 3.35 for the quarters ended February 1, 2020, May 2, 2020 and August 1, 2020, 3.10 for the quarter ended October 31, 2020, 2.50 for the quarter ended January 30, 2021, 2.35 for the quarter ended May 1, 2021, 2.10 for the quarters ending July 31, 2021 and October 30, 2021 and 1.85 for all quarters thereafter. The Amended Term Loan Credit Agreement amended the definition of total debt used in the Total Net Leverage Ratio calculation for the quarters ended October 31, 2020, January 30, 2021 and May 1, 2021 and the quarter ending July 31, 2021. The amended definition of total debt permits us to exclude indebtedness associated with our Existing ABL Facility, as amended, through the quarter ended October 31, 2020, removes the $20.0 million cap from the amount of cash and cash equivalents on-hand that we are permitted to net against our total debt for purposes of the ratio calculation through the quarter ended January 30, 2021, and raises the $20.0 million cap to $40.0 million and $30.0 million for the quarters ended May 1, 2021 and ending July 31, 2021, respectively, before reverting to $20.0 million for all quarters thereafter. As of the end of the first quarter of fiscal year 2021, our Total Net Leverage Ratio was 0.91. We anticipate meeting this covenant in future periods, including periods in which the definition of total debt reverts to the $20.0 million cap.

The Amended Term Loan Credit Agreement contains a limitation on our capital expenditures paid in cash in any fiscal year and such expenditures may not exceed 37.5% of prior year Adjusted EBITDA (as defined by the Amended Term Loan Credit Agreement). If the amount of our capital expenditures paid in cash in any fiscal year is less than the 37.5% threshold, 50% of the difference is automatically applied to increase the maximum threshold in the next fiscal year. The Amended Term Loan Credit Agreement also contains a number of other covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: create, incur or assume liens on our assets or property; incur additional indebtedness; make capital expenditures; issue preferred or disqualified stock; incur hedging obligations; consolidate or merge; sell assets; pay dividends or make distributions, make investments or engage in transactions with our affiliates.

As of the end of the first quarter of fiscal year 2021, we were compliant with our debt covenants under the Amended Term Loan Credit Agreement.

We consider the carrying amount of the term loan to approximate fair value because of the variable interest rate of the term loan.

As of the end of the first quarter of fiscal year 2021, total borrowings, net of OID and financing costs, of $202.0 million remain outstanding under the Amended Term Loan Credit Agreement. During the three-month period ended May 2, 2020, we recognized $5.5 million of interest expense and recognized $0.3 million of OID and financing costs related to the Term Loan Credit Agreement. During the three-month period ended May 1, 2021, we recognized $4.1 million of interest expense and recognized $0.4 million of OID and financing costs related to the Amended Term Loan Credit Agreement. The OID and financing costs are amortized over the Amended Term Loan Credit Agreement's five and a half-year term and are reflected as a direct deduction of the face amount of the term loan in our condensed consolidated balance sheets. We recognize interest payments, together with amortization of the OID and financing costs, in interest expense in our condensed consolidated statements of operations and comprehensive income.

Senior Secured Asset-Based Revolving Credit Facility

In May 2015, we entered into a credit agreement for a senior secured asset-based revolving credit facility ("Original ABL Facility") of $50.0 million (subject to a borrowing base), with Bank of America, N.A. On October 23, 2017, we entered into an amended and restated credit agreement ("Existing ABL Facility"), which amended our Original ABL Facility. The Existing ABL Facility increased the aggregate commitments available under the Original ABL Facility from $50.0 million to $100.0 million (subject to a borrowing base); and increased our right to request additional commitments from up to $30.0 million to up to $30.0 million plus the aggregate principal amount of any permanent principal reductions we may take (subject to customary conditions precedent). On June 14, 2019, in conjunction with the Term Loan Credit Agreement, we entered into an amendment to the Existing ABL Facility (the "1st Amendment"). The 1st Amendment decreased the aggregate commitments available under the Existing ABL Facility from $100.0 million to $70.0 million (subject to a borrowing base), permitted indebtedness incurred pursuant to the Term Loan Credit Agreement and made certain other modifications. On September 4, 2019, we entered into another amendment to the Existing ABL Facility (the "2nd Amendment"). The 2nd Amendment permitted parent company financial statements to be used to satisfy reporting requirements and made certain other modifications. The principal amount outstanding of the loans under the Existing ABL Facility, as amended, is due and payable in full on October 23, 2022. All other material terms of the Existing ABL Facility existing prior to the 1st Amendment and 2nd Amendment remain substantially the same.

The borrowing base for the Existing ABL Facility, as amended, at any time equals the sum of 90% of eligible credit card receivables, plus 90% of the appraised net orderly liquidation value of eligible inventory and eligible in-transit inventory multiplied by the cost of such eligible inventory and eligible in-transit inventory (to be increased to 92.5% during the period beginning on September 1 of each year and ending on December 31 of each year). The Existing ABL Facility, as amended, includes borrowing capacity for letters of credit and for borrowings on same-day notice, referred to as Swing Line Loans, and is available in U.S. dollars.

Under the Existing ABL Facility, as amended, we have the right to request up to $30.0 million of additional commitments plus the aggregate principal amount of any permanent principal reductions we may take. The lenders under this facility are not under any obligation to provide any such additional commitments, and any increase in commitments is subject to customary conditions precedent. If we were to request any such additional commitments and the existing lenders or new lenders were to agree to provide such commitments, the size of the Existing ABL Facility, as amended, could increase to up to $100.0 million, but our ability to borrow under this facility would still be limited by the amount of the borrowing base.

Borrowings under the Existing ABL Facility, as amended, bear interest at an annual rate equal to, at our option, either (a) a base rate determined by reference to the highest of (1) the prime rate of Bank of America, N.A., (2) the federal funds effective rate plus 0.50% and (3) a LIBOR rate for an interest period of one month adjusted for certain costs, plus 1.00% or (b) at a LIBOR rate for the interest period relevant to such borrowing adjusted for certain costs ("Adjusted LIBOR"), in each case plus an applicable margin that ranges from 1.25% to 1.75% for LIBOR borrowings and 0.25% to 0.75% for base rate borrowings, in each case, based on average daily availability. As of the end of the first quarter of fiscal year 2021, the applicable interest rate for borrowings under the Existing ABL Facility was approximately 4% per annum.

If we elect the LIBOR rate, interest is due and payable on the last day of each interest period, unless an interest period exceeds three months, then the respective dates that fall every three months after the beginning of the interest period shall also be interest payment dates. If we opt for the base rate (including a Swing Line Loan), interest is due and payable on the first business day of each month and on the maturity date.

In addition to paying interest on outstanding principal under the Existing ABL Facility, as amended, we are required to pay a commitment fee in respect of unutilized commitments. The commitment fee ranges between 0.25% and 0.375% per annum of unutilized commitments and will be subject to adjustment each fiscal quarter based on the amount of unutilized commitments during the immediately preceding fiscal quarter. We must also pay customary letter of credit fees and agent fees.

If at any time the aggregate amount of outstanding loans, unreimbursed letter of credit drawings and undrawn letters of credit under the Existing ABL Facility, as amended, exceeds the lesser of (a) the commitment amount and (b) the borrowing base, we will be required to repay outstanding loans and/or cash collateralize letters of credit in an aggregate amount equal to such excess, with no reduction of the commitment amount.

We may voluntarily reduce the unused portion of the commitment amount and repay outstanding loans at any time. Prepayment of the loans may be made without premium or penalty other than customary “breakage” costs with respect to LIBOR loans.

All obligations under the Existing ABL Facility, as amended, are unconditionally guaranteed by substantially all of Torrid Intermediate LLC’s existing majority-owned domestic subsidiaries and will be required to be guaranteed by certain of Torrid Intermediate LLC’s future domestic majority-owned subsidiaries. All obligations under the Existing ABL Facility, as amended, and the guarantees of those obligations, will be secured, subject to certain exceptions, by substantially all of Torrid Intermediate LLC’s assets.

The Existing ABL Facility, as amended, requires us to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 if we fail to maintain Specified Availability (as defined by the Existing ABL Facility, as amended) of at least the greater of 10% of the Loan Cap, as defined by the Existing ABL Facility, as amended, and $5.0 million. The Existing ABL Facility, as amended, contains a number of other covenants that, among other things and subject to certain exceptions, will restrict our ability and the ability of our subsidiaries to: incur additional indebtedness; pay dividends on our capital stock or redeem, repurchase or retire our capital stock or our other indebtedness; make investments, loans and acquisitions; engage in transactions with our affiliates; sell assets, including capital stock of our subsidiaries; alter the business we conduct; consolidate or merge; and incur liens. As of the end of the first quarter of fiscal year 2021, we were compliant with our debt covenants under the Existing ABL Facility, as amended.

The Existing ABL Facility, as amended, specifically restricts dividends and distributions, aside from amounts to cover ordinary operating expenses and taxes, between our subsidiaries and to us. However, dividends and distributions are permitted at any time that either (1) availability under the Existing ABL Facility, as amended, is equal to or greater than 15% of the maximum borrowing amount on a pro forma basis and we are pro forma compliant with a 1.00 to 1.00 fixed charge coverage ratio or (2) availability under the Existing ABL Facility, as amended, is equal to or greater than 20% of the maximum borrowing amount on a pro forma basis. As of the end of the first quarter of fiscal year 2021, the maximum restricted payment utilizing the Existing ABL Facility, as amended, that our subsidiaries could make from its net assets was $55.0 million.

We consider the carrying amounts of the Existing ABL Facility, as amended, to approximate fair value because of the variable interest rate of this facility.

Availability under the Existing ABL Facility, as amended, at the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021 was $65.5 million, which reflects no borrowings. In March 2020, we borrowed $50.0 million from the Existing ABL Facility, as amended, as a precautionary measure to increase our

cash position and preserve financial flexibility in light of uncertainty resulting from COVID-19. In the second quarter of fiscal year 2020, we repaid the $50.0 million outstanding under the Existing ABL Facility, as amended. Standby letters of credit issued and outstanding were $4.5 million as of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021. During the third quarter of fiscal year 2017, we incurred $0.5 million of financing costs for the Existing ABL Facility. These financing costs, together with the then unamortized financing costs of $0.2 million associated with the Original ABL Facility, further reduced in fiscal year 2019 by $0.1 million written off to account for the impact of our entry into the 1st Amendment, are amortized over the Existing ABL Facility's five-year term and are reflected in prepaid expenses and other current assets and deposits and other noncurrent assets in our condensed consolidated balance sheets. During the three-month periods ended May 2, 2020 and May 1, 2021, amortization of financing costs for the Existing ABL Facility was not material. During the three-month periods ended May 2, 2020 and May 1, 2021, interest payments were $0.2 million and $0.1 million, respectively. We recognize amortization of financing costs and interest payments for the revolving credit facilities in interest expense in our condensed consolidated statements of operations and comprehensive income.

Note 13. Income Taxes

Effective Tax Rate

During the three-month periods ended May 2, 2020 and May 1, 2021, the provision for income taxes were $1.6 million and $8.1 million, respectively. The effective tax rates for the three-month periods ended May 2, 2020 and May 1, 2021, were 11.2% and 38.4%, respectively. The change in the effective tax rate for the three-month period ended May 1, 2021, as compared to the three-month period ended May 2, 2020, is primarily due to the increase in the amount of non-taxable items associated with share-based compensation relative to income before provision for income taxes for the three-month period ended May 1, 2021.

On March 27, 2020, December 27, 2020 and March 11, 2021 the CARES Act, CAA and ARPA, respectively, were signed into law and have resulted in significant changes to the U.S. federal corporate tax law as described in "Note 1—Basis of Presentation and Description of the Business." We have considered the applicable CARES Act, CAA and ARPA tax law changes in our tax provision for the period ended May 1, 2021 and continue to evaluate the impact of these tax law changes on future periods.

Uncertain Tax Positions

The amount of income taxes we pay is subject to ongoing audits by taxing authorities. Our estimate of the potential outcome of any uncertain tax issue is subject to our assessment of the relevant risks, facts and circumstances existing at the time. We believe that we have adequately provided for reasonably foreseeable outcomes related to these matters. However, our future results may include favorable or unfavorable adjustments to our estimated tax liabilities in the period the assessments are made or resolved, which may impact our effective tax rate. As of the end of fiscal year 2020, the total liability for income tax associated with unrecognized tax benefits, including interest and penalties, was $2.4 million ($2.0 million, net of federal benefit). As of the end of the first quarter of fiscal year 2021, the total liability for income tax associated with unrecognized tax benefits, including interest and penalties, was $2.6 million ($2.1 million, net of federal benefit). Our effective tax rate will be affected by any portion of this liability we may recognize.

We believe that it is reasonably possible that $0.2 million ($0.2 million net of federal benefit) of our liability for unrecognized tax benefits, of which the associated interest and penalties are not material, may be recognized in the next 12 months due to the expiration of statutes of limitations.

IT Asset Purchase Agreement with Hot Topic

In connection with the IT Asset Purchase Agreement, we generated a tax amortizable basis of the $29.5 million purchase price, amortizable over three years commencing in fiscal year 2019. We recorded the

$26.0 million variance between the $3.5 million net book value and $29.5 million tax amortizable basis of the information technology assets in equity, net of $6.7 million deferred tax.

Note 14. Share-Based Compensation

Beginning in fiscal year 2015 and through the end of the first quarter of fiscal year 2021, our parent, Torrid Holding LLC issued 13.7 million Class A, Class B, Class C, Class D, Class E, Class F, Class G, Class H and Class J Torrid incentive units in the aggregate, net of forfeitures, to certain members of our management.

We recognize the impact of share-based compensation associated with incentive units issued by our parent in selling, general and administrative expenses in the condensed consolidated statements of operations and comprehensive income. The share-based compensation expense and related capital contribution are reflected in our condensed consolidated financial statements as these awards are deemed to be for our benefit. The intent of the incentive units is to provide profit-sharing opportunities to management rather than equity ownership in our parent. In addition, the incentive units do not have any voting or distribution rights and contain a repurchase feature, whereby upon termination, our parent has the right to purchase from former employees any or all of the vested incentive units at fair value. Based on these aforementioned features and characteristics, we determined that the incentive units were in-substance liabilities accounted for as liability instruments in accordance with ASC 710, *Compensation*. The incentive units are remeasured based on the fair value of the awards at the end of each reporting period. We recorded the expense associated with changes in the fair value of these incentive units as a capital contribution from our parent as our parent is the legal obligor for the incentive units.

The incentive units were valued utilizing a contingent claims analysis ("CCA") methodology based on a Black-Scholes option pricing model ("OPM"). Under the OPM, each class of incentive units is modeled as a call option with a unique claim on the assets of our parent. The characteristics of each class of incentive units determine the uniqueness of the claim on the assets of our parent. The OPM used to value the incentive units incorporates various assumptions, including the time to liquidity event, equity volatility and risk-free interest rate of return. Equity volatility is based on the historical volatilities of comparable publicly traded companies for the time horizon equal to the time to the anticipated liquidity event; and the risk-free interest rate is for a term corresponding to the time to liquidity event. The assumptions underlying the valuation of the incentive units represent our best estimates, which involve inherent uncertainties and the application of our judgement. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our non-cash share-based compensation expense could be materially different. Our non-cash share-based compensation expense could also be materially different if there are significant fluctuations in the Torrid Holding LLC equity value.

The most recent remeasurement of the fair value of the incentive units was performed as of the end of the first quarter of fiscal year 2021 and the fair value of these awards was determined to be $121.4 million in aggregate, net of forfeitures. Based on the fair value of the incentive units as of the end of the first quarter of fiscal year 2021, we had $4.1 million of unrecognized share-based compensation expense related to the unvested and unearned portion of the incentive units.

The incentive units vest over periods ranging from 2.7 to 5.0 years from the date of grant. The share-based compensation expense and associated capital contribution for these awards is recognized over the vesting period as the awards are earned.

During the three-month period ended May 2, 2020, we recorded a reduction of $38.5 million to share-based compensation expense, primarily due to a decline in the Torrid Holding LLC equity value. During the three-month period ended May 1, 2021, we recognized share-based compensation expense of $39.8 million.

As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, Torrid Holding LLC had 13.7 million and 13.7 million of outstanding incentive units, respectively, and 1.9 million and 1.7 million of unvested incentive units, respectively, issued to our employees.

IPO Awards

We have entered into agreements with certain members of our management whereby if an IPO occurs during the employment of our Chief Executive Officer, Elizabeth Muñoz, ("CEO") and certain other members of our management, they are entitled to one-time grants of restricted stock units or restricted stock shares ("IPO Awards") in amounts equal to $4.3 million in the aggregate. With the exception of the CEO's agreement, the IPO Award agreements will expire if an IPO does not occur prior to the second anniversary of each date of the individual IPO Award agreements. 50% of the IPO Awards will be fully vested on the date of grant, and the remaining 50% will vest in equal installments on the first, second and third anniversaries of the date of an IPO. These members of our management must remain employed by us through each vesting date in order to vest in the applicable portions of their IPO Awards. Consequently, we will recognize $2.1 million of share-based compensation expense related to these IPO Awards upon the consummation of an IPO with the remainder recognized over the three-year vesting period.

Note 15. Commitments and Contingencies

Litigation

From time to time, we are involved in matters of litigation that arise in the ordinary course of business. Though significant litigation or awards against us could seriously harm our business and financial results, we do not at this time expect these matters of litigation to have a material adverse effect on our overall financial condition.

Indemnities, Commitments and Guarantees

During the ordinary course of business, we have made certain indemnities, commitments and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include those given to various lessors in connection with facility leases for certain claims arising from such facility or lease and indemnities to our board of directors and officers to the maximum extent permitted. Commitments include those given to various merchandise vendors and suppliers. From time to time, we have issued guarantees in the form of standby letters of credit as security for workers' compensation claims. (Our letters of credit are discussed in more detail in "Note 12—Debt Financing Arrangements"). The durations of these indemnities, commitments and guarantees vary. Some of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. We have not recorded any liability for these indemnities, commitments and guarantees in the accompanying condensed consolidated financial statements as no demands have been made upon us to provide indemnification under such agreements and there are no claims that we are aware of that could have a material effect on our condensed consolidated financial statements.

Note 16. Stockholder's Deficit

Torrid Parent Inc. was formed on June 4, 2019. Torrid Parent Inc. is authorized to issue 1,000 shares of common stock at $0.01 par value. Torrid Parent Inc. had 1,000 shares of common stock issued and outstanding upon formation. Historical periods prior to the formation of Torrid Parent Inc. have been revised to reflect our current capital structure.

Note 17. Fair Value Measurements

We carry certain of our assets and liabilities at fair value in accordance with GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Valuation techniques used to measure fair value require us to maximize the use of observable inputs and minimize the use of unobservable inputs. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Financial assets and liabilities carried at fair value are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs, other than Level 1 prices, such as quoted prices for similar assets or liabilities in active markets; quoted prices for similar assets or liabilities in markets that are not active; or other inputs other than quoted prices that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities, including interest rates and yield curves, and market corroborated inputs.

Level 3: Unobservable inputs for the asset or liability that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. These are valued based on our estimates and assumptions that market participants would use in pricing the asset or liability.

Financial assets and liabilities measured at fair value on a recurring basis as of the end of fiscal year 2020 consisted of the following (in thousands):

	January 30, 2021	Quoted Prices in Active Markets for Identical Items (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3
Assets:				
Money market funds (cash equivalent)	$ 73,024	$ 73,024	$ —	$ —
Total assets	$ 73,024	$ 73,024	$ —	$ —
Liabilities:				
Deferred compensation plan liability (noncurrent)	$ 6,531	$ —	$ 6,531	$ —
Total liabilities	$ 6,531	$ —	$ 6,531	$ —

Financial assets and liabilities measured at fair value on a recurring basis as of the end of the first quarter of fiscal year 2021 consisted of the following (in thousands):

	May 1, 2021	Quoted Prices in Active Markets for Identical Items (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Money market funds (cash equivalent)	$ 171,101	$ 171,101	$ —	$ —
Total assets	$ 171,101	$ 171,101	$ —	$ —
Liabilities:				
Deferred compensation plan liability (noncurrent)	$ 7,190	$ —	$ 7,190	$ —
Total liabilities	$ 7,190	$ —	$ 7,190	$ —

The fair value of our money market funds is based on quoted prices in active markets. The deferred compensation plan liability represents the amount that would be earned by participants if the funds were invested

in securities traded in active markets. The fair value of the deferred compensation plan liability is determined based on quoted prices of similar assets that are traded in observable markets, or represents the cash withheld by participants prior to any investment activity.

Note 18. Private Label Credit Card

We have an agreement with a third party to provide customers with private label credit cards ("Credit Card Agreement"). Each private label credit card bears the logo of the Torrid brand and can only be used at our store locations and on www.torrid.com. A third-party financing company is the sole owner of the accounts issued under the private label credit card program and absorbs the losses associated with non-payment by the private label card holders and a portion of any fraudulent usage of the accounts. Pursuant to the Credit Card Agreement, we receive marketing and promotional funds from the third-party financing company for certain expenses we incur based on usage of the private label credit cards. These marketing and promotional funds are recorded as a reduction in selling, general and administrative expenses in the condensed consolidated statements of operations and comprehensive income. During the three-month periods ended May 2, 2020 and May 1, 2021, these funds amounted to $2.4 million and $4.6 million, respectively, related to these private label credit cards.

Note 19. Deferred Compensation Plan

On August 1, 2015, we established the Torrid LLC Management Deferred Compensation Plan ("Deferred Compensation Plan") for the purpose of providing highly compensated employees a program to meet their financial planning needs. The Deferred Compensation Plan provides participants with the opportunity to defer up to 80% of their base salary and up to 100% of their annual earned bonus, all of which, together with the associated investment returns, are 100% vested from the outset. The Deferred Compensation Plan is designed to be exempt from most provisions of the Employee Retirement Security Act of 1974, as amended. All deferrals and associated earnings are our general unsecured obligations. We may at our discretion contribute certain amounts to eligible employees' accounts. To the extent participants are ineligible to receive contributions from participation in our 401(k) Plan (as defined in "Note 20—Employee Benefit Plan"), we may contribute 50% of the first 4% of participants' eligible contributions into their Deferred Compensation Plan accounts. From March 2020 to July 2020, we suspended our contributions to eligible employees' accounts as a precautionary measure in light of uncertainty resulting from COVID-19. As of the end of fiscal year 2020 and as of the end of the first quarter of fiscal year 2021, we did not have any assets of the Deferred Compensation Plan and the associated liabilities were $6.5 million and $7.2 million, respectively, included in our condensed consolidated balance sheets.

Note 20. Employee Benefit Plan

On August 1, 2015, we adopted the Torrid 401(k) Plan ("401(k) Plan"). All employees who have been employed by us for at least 200 hours and are at least 21 years of age are eligible to participate. Employees may contribute up to 80% of their eligible compensation to the 401(k) Plan, subject to a statutorily prescribed annual limit. We may at our discretion contribute certain amounts to eligible employees' accounts. We may contribute 50% of the first 4% of participants' eligible contributions into their 401(k) Plan accounts. From March 2020 to July 2020, we suspended our contributions to eligible employees' accounts as a precautionary measure in light of uncertainty resulting from COVID-19. During the three-month periods ended May 2, 2020 and May 1, 2021, we contributed $0.1 million and $0.2 million, respectively, to eligible employees' 401(k) Plan accounts.

Note 21. Subsequent Events

On May 6, 2021, the letter of support from Sycamore was terminated. Please refer to "Note 11—Related Party Transactions" for further discussion regarding the letter of support from Sycamore.

Subsequent events were evaluated through June 7, 2021, which is the date these condensed consolidated financial statements were available to be issued.

Events Subsequent to Original Issuance of Financial Statements

In connection with the reissuance of the financial statements, we have evaluated subsequent events through June 23, 2021, the date the financial statements were available to be reissued.

On June 14, 2021, we entered into a term loan credit agreement ("New Term Loan Credit Agreement") which provides for term loans in an initial aggregate amount of $350.0 million, which is recorded net of OID of $3.5 million and has a maturity date of June 14, 2028. In connection with the New Term Loan Credit Agreement, we paid financing costs of approximately $6.0 million.

The $346.5 million proceeds of the New Term Loan Credit Agreement, net of OID, were used to (i) pay the remaining outstanding borrowings and associated penalties and accrued interest under the Amended Term Loan Credit Agreement of $210.7 million; (ii) partially fund a $300.0 million distribution (the "Cash Distribution") to our parent (for which we received a $300M Related Party Promissory Note Receivable, as defined below); and (iii) pay for financing costs associated with the New Term Loan Credit Agreement and the 3rd Amendment to Amended ABL Facility (as defined below). The Cash Distribution was funded with approximately $131.7 million of borrowings under the New Term Loan Credit Agreement and approximately $168.3 million of our existing cash on hand.

On June 14, 2021, in conjunction with the New Term Loan Credit Agreement, we entered into a third amendment to the amended and restated credit agreement (the "3rd Amendment to Amended ABL Facility"), which amended our Existing ABL Facility, as amended. The 3rd Amendment to Amended ABL Facility increased the aggregate commitments available under the Existing ABL facility, as amended, from $70.0 million to $150.0 million (subject to a borrowing base) and extended the date upon which the principal amount outstanding of the loans would be due and payable in full from October 23, 2022 to June 14, 2026. All other material terms of the 3rd Amendment to Amended ABL Facility are substantially the same as the facility it replaced.

On June 14, 2021, our parent issued a $300.0 million promissory note to us in exchange for cash due on or before June 14, 2027 ("$300M Related Party Promissory Note Receivable"). The $300M Related Party Promissory Note Receivable accrues interest at an annual compounding rate of 1.02% upon its maturity. Due to the nature of this promissory note receivable, we consider it to be an in-substance distribution to our parent and account for it as contra-equity in accordance with ASC 310, *Receivables.*

Through and including , 2021, (the 25th day after the date of this prospectus), all dealers effecting transactions in the Common Stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

8,000,000 Shares

TORRID

Torrid Holdings Inc.

Common Stock

Morgan Stanley *BofA Securities* *Goldman Sachs & Co. LLC* *Jefferies*
Baird *Cowen* *William Blair*
Telsey Advisory Group

PROSPECTUS

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than the underwriting discounts and commissions payable by us, in connection with the offer and sale of the securities being registered. All amounts shown are estimates except for the SEC registration fee and the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee.

SEC registration fee	$	21,079
FINRA filing fee	$	225,500
NYSE listing fee	$	115,000
Printing expenses	$	580,000
Legal fees and expenses	$	2,500,000
Accounting fees and expenses	$	2,467,500
Miscellaneous expenses	$	90,921
Total expenses	$	6,000,000

Item 14. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our certificate of incorporation will provide for this limitation of liability.

Section 145 of the DGCL ("Section 145") provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which such officer or director has actually and reasonably incurred. Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director,

officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

Our bylaws will provide that we must indemnify our directors and officers to the fullest extent authorized by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this section or otherwise.

We intend to enter into indemnification agreements with each of our current directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

We expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification to our directors and officers by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

On February 20, 2020, Torrid Holdings Inc. issued 110,000,000 shares of common stock, par value $0.01 per share, to its parent company, Torrid Holding LLC, for $10.00 in exchange for ownership of 100% of the equity interests in Torrid Holdings Inc. The issuance of such common stock was exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), by virtue of the exemption contained in Section 4(a)(2) of the Securities Act on the basis that the transaction did not involve a public offering. No underwriters were involved in the issuance.

The historical share data set forth in this section has been adjusted to reflect the 110,000-for-1 split of Torrid Holdings Inc.’s common stock, which was effected on June 22, 2021.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

The exhibit index attached hereto is incorporated herein by reference.

(b) Financial Statement Schedules

Schedule I—Condensed Financial Information of Registrant

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this registration statement or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

EXHIBIT INDEX

Exhibit Number	Description
1.1	Form of Underwriting Agreement.
3.1	Form of Amended and Restated Certificate of Incorporation of Torrid Holdings Inc.
3.2	Form of Amended and Restated Bylaws of Torrid Holdings Inc., to be effective upon the completion of this offering.
5.1	Form of Opinion of Kirkland & Ellis LLP.
10.1	Term Loan Credit Agreement, dated June 14, 2019, among Torrid Inc., Torrid LLC, Cortland Capital Market Services LLC, as administrative agent and collateral agent, KKR Credit Advisors (US) LLC, as structuring advisor, KKR Capital Markets LLC, as sole lead arrange and bookrunner and the lenders party thereto.
10.2	Amendment No. 1 to the Credit Agreement, dated September 17, 2020, among Torrid Intermediate LLC (f/k/a Torrid Inc.), Torrid LLC, Cortland Capital Market Services LLC, as administrative agent, and the lenders party thereto.
10.3	Amended and Restated Credit Agreement, dated October 23, 2017, among Torrid LLC, the borrowers and guarantors named therein, Bank of America, N.A. Wells Fargo Bank, National Association, as joint lead arrangers and joint bookrunning managers, and the other lenders party thereto.
10.4	Amendment No. 1 to the Amended and Restated Credit Agreement, dated June 14, 2019, among Torrid Inc., Torrid LLC, Bank of America, N.A., as administrative and collateral agent, and the lenders party thereto.
10.5	Amendment No. 2 to the Amended and Restated Credit Agreement, dated September 4, 2019, Torrid LLC, Torrid Intermediate LLC (f/k/a Torrid Inc.), Bank of America, N.A., as administrative and collateral agent, and the lenders party thereto.
10.6	Amended and Restated Services Agreement, dated March 21, 2019, between Torrid LLC and Hot Topic Inc.
10.7	Amendment to Amended and Restated Services Agreement, dated August 1, 2019, between Torrid LLC and Hot Topic Inc.
10.8	Services Agreement, dated August 1, 2019, between Torrid LLC and Hot Topic Inc.
10.9	Form of Stockholders' Agreement.
10.10	Form of Registration Rights Agreement.
10.11+	Employment Agreement, dated December 13, 2019, by and between Torrid LLC and Elizabeth Muñoz.
10.12+	Employment Agreement, dated December 13, 2019, by and between Torrid LLC and Marc Katz.
10.13+	Employment Offer and Agreement, dated May 14, 2018, by and between Torrid LLC and Michael Salmon.
10.14+	Employment Offer and Agreement, dated August 9, 2019, by and between Torrid LLC and Anne Stephenson.
10.15+	Torrid Holdings Inc. Long-term Incentive Plan.

Exhibit Number	Description
10.16	Credit Agreement, dated June 14, 2021, among Torrid LLC, Torrid Intermediate LLC, Bank of America, N.A., as administrative and collateral agent, and the lenders party thereto.
10.17	Amendment No. 3 to the Amended and Restated Credit Agreement, dated June 14, 2021, among Torrid LLC, the other borrowers party thereto, Torrid Intermediate LLC (f/k/a Torrid Inc.), the other guarantors party thereto, Bank of America, N.A., as administrative and collateral agent, and the lenders party thereto.
10.18+	Form of Restricted Stock Agreement.
10.19+	Form of Restricted Stock Unit Agreement.
10.20+	Form of Nonqualified Stock Option Agreement.
10.21+	Employee Stock Purchase Plan.
10.22+	Form of Director and Officer Indemnification Agreement.
21.1	List of subsidiaries of Torrid Holdings Inc.
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm related to Torrid Holdings Inc.
23.2	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm related to Torrid Parent Inc.
23.3	Consent of Kirkland & Ellis LLP (included in Exhibit 5.1).
24.1	Powers of Attorney (included on signature page).

+ Indicates a management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in City of Industry, California on June 23, 2021.

Torrid Holdings Inc.

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer and Director

POWER OF ATTORNEY

Each officer and director of Torrid Holdings Inc. whose signature appears below constitutes and appoints Elizabeth Muñoz and George Wehlitz, and each of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and revocation, for him or her and in his or her name, place and stead, in any and all capacities, to execute any or all amendments including any post-effective amendments and supplements to this Registration Statement, and any additional Registration Statement filed pursuant to Rule 462, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

* * * *

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on the date indicated below:

Name	Title	Date
/s/ Elizabeth Muñoz Elizabeth Muñoz	Chief Executive Officer and Director (principal executive officer)	June 23, 2021
* George Wehlitz	Chief Financial Officer (principal financial officer and principal accounting officer)	June 23, 2021
* Lisa Harper	Director	June 23, 2021
* Stefan L. Kaluzny	Director	June 23, 2021
* Dary Kopelioff	Director	June 23, 2021
/s/ Theophlius Killion Theophlius Killion	Director	June 23, 2021

*By: /s/ Elizabeth Muñoz
Elizabeth Muñoz
Attorney-In-Fact

Exhibit 1.1

TORRID HOLDINGS INC.

(a Delaware corporation)

[•] Shares of Common Stock

UNDERWRITING AGREEMENT

Dated: [•], 2021

TORRID HOLDINGS INC.

(a Delaware corporation)

[•] Shares of Common Stock

UNDERWRITING AGREEMENT

[•], 2021

Morgan Stanley & Co. LLC
BofA Securities, Inc.
Goldman Sachs & Co. LLC
as Representatives of the several Underwriters

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street,
New York, New York 10282-2198

Ladies and Gentlemen:

Torrid Holdings Inc., a Delaware corporation (the "Company"), and the persons listed in Schedule B hereto (the "Selling Stockholders") confirm their respective agreements with Morgan Stanley & Co. LLC ("Morgan Stanley"), BofA Securities, Inc. ("BofAS") and Goldman Sachs & Co. LLC ("Goldman Sachs") and each of the other Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Morgan Stanley, BofAS and Goldman Sachs are acting as representatives (in such capacity, the "Representatives"), with respect to (i) the sale by the Selling Stockholders, acting severally and not jointly, and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of Common Stock, par value $0.01 per share, of the Company ("Common Stock") set forth in Schedules A and B hereto and (ii) the grant by the Selling Stockholders to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of [•] additional shares of Common Stock. The aforesaid [•] shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the [•] shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are herein called, collectively, the "Securities."

The Company and the Selling Stockholders understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-1 (No. 333-256871), including the related preliminary prospectus or prospectuses, covering the registration of the sale of the Securities under the Securities Act of 1933, as amended (the "1933 Act"). Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A ("Rule 430A") of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations") and Rule 424(b) ("Rule 424(b)") of the 1933 Act Regulations. The information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective pursuant to Rule 430A(b) is herein called the "Rule 430A Information." Such registration statement, including the amendments thereto, the exhibits thereto and any schedules thereto, at the time it became effective, and including the Rule 430A Information, is herein called the "Registration Statement." Any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations is herein called the "Rule 462(b) Registration Statement" and, after such filing, the term "Registration Statement" shall include the Rule 462(b) Registration Statement. Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a "preliminary prospectus." The final prospectus, in the form first furnished to the Underwriters for use in connection with the offering of the Securities, is herein called the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system ("EDGAR").

As used in this Agreement:

"Applicable Time" means [•] P.M., New York City time, on [•], 2021 or such other time as agreed by the Company and the Representatives.

"General Disclosure Package" means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time, the most recent preliminary prospectus that is distributed to investors prior to the Applicable Time and the information included on Schedule C-1 hereto, all considered together.

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the 1933 Act Regulations ("Rule 433"), including without limitation any "free writing prospectus" (as defined in Rule 405 of the 1933 Act Regulations ("Rule 405")) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a "*bona fide* electronic road show," as defined in Rule 433 (the "Bona Fide Electronic Road Show")), as evidenced by its being specified in Schedule C-2 hereto.

"Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

"Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the 1933 Act.

"Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the 1933 Act.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company*. The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. Each of the Registration Statement and any amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes or under Section 8A of the Act have been instituted or are pending or, to the Company's knowledge, threatened by the Commission. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus delivered to the Underwriters for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, on the date hereof, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading. At the Applicable Time and any Date of Delivery, none of (A) the General Disclosure Package, (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, or (C) any individual Written Testing-the-Waters Communication, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto, as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading "Underwriting—

Commissions and Discounts," the information in the first and second sentences of the second paragraph and third and fourth paragraphs under the heading "Underwriting—Price Stabilization, Short Positions and Penalty Bids" and the information under the heading "Underwriting—Electronic Distribution," in each case contained in the Prospectus (collectively, the "Underwriter Information").

(iii) *[Reserved.]*

(iv) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. The Company has made available a Bona Fide Electronic Road Show in compliance with Rule 433(d)(8)(ii) such that no filing of any "road show" (as defined in Rule 433(h)) is required in connection with the offering of the Securities. The representations and warranties in this subsection shall not apply to statements in or omissions from any Issuer Free Writing Prospectus made in reliance upon or in connection with Underwriter Information.

(v) Testing-the-Waters Materials. The Company (A) has not engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications with the consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the 1933 Act or institutions that are accredited investors within the meaning of Rule 501 under the 1933 Act and (B) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications other than those listed on Schedule C-3 hereto.

(vi) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(vii) Emerging Growth Company Status. From the time of the initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any Person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the 1933 Act (an "Emerging Growth Company").

(viii) Independent Accountants. The accountants who certified the financial statements and supporting schedules included in the Registration Statement, the General Disclosure Package and the Prospectus are independent public accountants as required by the 1933 Act, the 1933 Act Regulations and the Public Company Accounting Oversight Board.

(ix) Financial Statements; Non-GAAP Financial Measures. The financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly, in all material respects, the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries

for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly, in all material respects, the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical financial statements or supporting schedules are required to be included in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Securities Exchange Act of 1934, as amended (the "1934 Act") and Item 10 of Regulation S-K of the 1933 Act, in each case as in effect on the date hereof and to the extent applicable.

(x) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(xi) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the state of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not be reasonably expected to result in a Material Adverse Effect.

(xii) Good Standing of Subsidiaries. Each "significant subsidiary" of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a "Subsidiary" and, collectively, the "Subsidiaries") has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not be reasonably expected to result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock of any Subsidiary were issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only subsidiaries of the Company are the subsidiaries listed on Exhibit 21 to the Registration Statement.

(xiii) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package and the Prospectus). The outstanding shares of capital stock of the Company, including the Securities to be purchased by the Underwriters from the Selling Stockholders, have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company, including the Securities to be purchased by the Underwriters from the Selling Stockholders, were issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xiv) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xv) Authorization and Description of Securities. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement, and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and non assessable; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The Common Stock conforms in all material respects to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. No holder of Securities will be subject to personal liability by reason of being such a holder.

(xvi) Registration Rights. There are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale or sold by the Company under the 1933 Act pursuant to this Agreement, other than those rights that have been disclosed in the Registration Statement, the General Disclosure Package and the Prospectus and have been waived.

(xvii) Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, "Agreements and Instruments"), except for such defaults that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a "Governmental Entity"), except for such violations that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation

of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption "Use of Proceeds") and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xviii) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary's principal suppliers, manufacturers, customers or contractors, which, in either case, would result in a Material Adverse Effect.

(xix) Absence of Proceedings. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which would reasonably be expected to result in a Material Adverse Effect, or which would reasonably be expected to materially and adversely affect their respective properties or assets or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, would not reasonably be expected to result in a Material Adverse Effect.

(xx) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(xxi) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the New York Stock Exchange, state securities laws or the rules of FINRA.

(xxii) Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would be reasonably expected to result in a Material Adverse Effect.

(xxiii) Title to Property. The Company and its subsidiaries have good and marketable title to all real property owned by them and good title to all other properties owned by them that are material to the Company, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package and the Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any such subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(xxiv) Possession of Intellectual Property. The Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, "Intellectual Property") necessary to carry on the business now operated by them, except where the failure to own, possess or acquire such rights would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any of its subsidiaries has received any notice of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(xxv) Environmental Laws. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus or would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (A) to the knowledge of the Company, neither the Company nor any of its subsidiaries is in violation of any applicable federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent,

decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) to the knowledge of the Company, the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any of its subsidiaries, and (D) to the knowledge of the Company, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxvi) Accounting Controls. The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13-a15 and 15d-15 under the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations")) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially adversely affected, or is reasonably likely to materially adversely affect, the Company's internal control over financial reporting.

(xxvii) Compliance with the Sarbanes-Oxley Act. The Company has taken all necessary actions to ensure that, upon the effectiveness of the Registration Statement, it will be in compliance in all material respects with all provisions of the Sarbanes-Oxley Act of 2002 and all rules and regulations promulgated thereunder or implementing the provisions thereof (the "Sarbanes-Oxley Act") that are then in effect and with which the Company is required to comply as of the effectiveness of the Registration Statement, and is taking reasonable steps to ensure that it will be in compliance with other provisions of the Sarbanes-Oxley Act not currently in effect, upon the effectiveness of such provisions, or which will become applicable to the Company at all times after the effectiveness of the Registration Statement.

(xxviii) Payment of Taxes. All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided, except in any case in which the failure to so file or pay would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The United States federal income tax returns of the Company through the fiscal year ended February 1, 2020 have been settled

and no assessment in connection therewith has been made against the Company. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not reasonably be expected to result in a Material Adverse Effect, and has paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company and its subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company, except in any case in which the failure to pay would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not reasonably be expected to result in a Material Adverse Effect.

(xxix) Insurance. The Company and its subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by similarly sized companies engaged in the same or similar business, and all such insurance is in full force and effect, except where failure to carry such insurance would not reasonably be expected to result in a Material Adverse Effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither of the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(xxx) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act").

(xxxi) Absence of Manipulation. Neither the Company nor any controlled affiliate of the Company has taken, nor will the Company or any controlled affiliate take, directly or indirectly, any action which is designed, or would reasonably be expected, to cause or result in, or which constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the 1934 Act.

(xxxii) Foreign Corrupt Practices Act. (1) None of the Company, any of its subsidiaries or any director, officer or controlled affiliate thereof or, to the knowledge of the Company, any agent, non-controlled affiliate, employee, or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA") or any other applicable anti-corruption laws, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, (2) the Company and, to the knowledge of the Company, its subsidiaries have conducted their

businesses in compliance with the FCPA and have instituted and maintain policies and procedures reasonably designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith and (3) neither the Company nor any of its subsidiaries will use, directly or indirectly, the proceeds of the offering 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 applicable anti-corruption laws.

(xxxiii) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or threatened.

(xxxiv) OFAC. None of the Company, any of its subsidiaries or any director or officer thereof or, to the knowledge of the Company, any agent, employee, controlled affiliate or representative of the Company or any of its subsidiaries is an individual or entity ("Person"), or is owned or controlled by one or more Persons that are, currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the United Nations Security Council ("UNSC"), the European Union, Her Majesty's Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company, any of its subsidiaries or any director, officer or employee thereof or, to the knowledge of the Company, any agent, controlled affiliate or representative of the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. The Company and each of its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(xxxv) Lending Relationship. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, the Company (i) does not have any material lending or other relationship with any bank or lending affiliate of any Underwriter and (ii) does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any affiliate of any Underwriter.

(xxxvi) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xxxvii) Cybersecurity. (A) To the knowledge of the Company, there has been no material security breach or incident, unauthorized access or disclosure, or other compromise of or relating to the Company or its subsidiaries information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company and its subsidiaries, and any such data processed or stored by third parties on behalf of the Company and its subsidiaries), equipment or technology (collectively, "IT Systems and Data"): (B) neither the Company nor its subsidiaries have been notified of, and each of them have no knowledge of any event or condition that could result in, any security breach or incident, unauthorized access or disclosure or other compromise to their IT Systems and Data and (C) the Company and its subsidiaries have implemented appropriate controls, policies, procedures, and technological safeguards to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards. The Company and its subsidiaries are in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

(b) *Representations and Warranties by the Selling Stockholders*. Each Selling Stockholder severally and not jointly represents and warrants to each Underwriter as of the date hereof, as of the Applicable Time and as of the Closing Time, and, if the Selling Stockholder is selling Option Securities on a Date of Delivery, as of each such Date of Delivery, and agrees with each Underwriter, as follows:

(i) Accurate Disclosure. Such Selling Stockholder is not prompted by any information concerning the Company or any of its subsidiaries that is not disclosed in the General Disclosure Package to sell its Securities pursuant to this Agreement.

(ii) Authorization of this Agreement. This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Stockholder.

(iii) Authorization of Power of Attorney and Custody Agreement. The Power of Attorney and Custody Agreement, in the form heretofore furnished to the Representatives (the "Power of Attorney and Custody Agreement"), has been duly authorized, executed and delivered by such Selling Stockholder and is the valid and binding agreement of such Selling Stockholder.

(iv) Noncontravention. The execution and delivery of this Agreement and the Power of Attorney and Custody Agreement and the sale and delivery of the Securities to be sold by such Selling Stockholder and the consummation of the transactions contemplated herein and compliance by such Selling Stockholder with its obligations hereunder do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any tax, lien, charge or encumbrance upon the Securities to be sold by such Selling Stockholder or any property or assets of such Selling Stockholder pursuant to any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, license, lease or other agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder may be bound, or to which any of the property or assets of such Selling Stockholder is subject (except for such conflicts, breaches or defaults, or taxes, liens, charges or encumbrances that would not, individually or in the aggregate, reasonably be expected to materially impair the power or ability of the Selling Stockholders to perform their obligations under this Agreement, or to consummate the transactions contemplated hereby), nor will such action result in any violation of (A) the provisions of the charter or by-laws or other organizational instrument of such Selling Stockholder (if such Selling Stockholder is a business entity), or (B) any

applicable treaty, law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over such Selling Stockholder or any of its properties, except in the case of clause (B) hereto for such violations that would not, individually or in the aggregate, reasonably be expected to materially impair the power or ability of the Selling Stockholders to perform their obligations under this Agreement or to consummate the transaction contemplated hereby.

(v) Valid Title. Such Selling Stockholder has, and at the Closing Time will have, valid title to the Securities to be sold by such Selling Stockholder free and clear of all security interests, claims, liens, equities or other encumbrances and the legal right and power, and all authorization and approval required by law, to enter into this Agreement and the Power of Attorney and Custody Agreement and to sell, transfer and deliver the Securities to be sold by such Selling Stockholder.

(vi) Delivery of Securities. Upon payment of the purchase price for the Securities to be sold by such Selling Stockholder pursuant to this Agreement, delivery of such Securities, as directed by the Underwriters, to Cede & Co. ("Cede") or such other nominee as may be designated by The Depository Trust Company ("DTC") (unless delivery of such Securities is unnecessary because such Securities are already in possession of Cede or such nominee), registration of such Securities in the name of Cede or such other nominee (unless registration of such Securities is unnecessary because such Securities are already registered in the name of Cede or such nominee), and the crediting of such Securities on the books of DTC to securities accounts (within the meaning of Section 8-501(a) of the UCC) of the Underwriters (assuming that neither DTC nor any such Underwriter has notice of any "adverse claim," within the meaning of Section 8-105 of the Uniform Commercial Code then in effect in the State of New York ("UCC"), to such Securities), (A) under Section 8-501 of the UCC, the Underwriters will acquire a valid "security entitlement" in respect of such Securities and (B) no action (whether framed in conversion, replevin, constructive trust, equitable lien, or other theory) based on any "adverse claim," within the meaning of Section 8-102 of the UCC, to such Securities may be asserted against the Underwriters with respect to such security entitlement; for purposes of this representation, such Selling Stockholder may assume that when such payment, delivery (if necessary) and crediting occur, (I) such Securities will have been registered in the name of Cede or another nominee designated by DTC, in each case on the Company's share registry in accordance with its certificate of incorporation, bylaws and applicable law, (II) DTC will be registered as a "clearing corporation," within the meaning of Section 8-102 of the UCC, (III) appropriate entries to the accounts of the several Underwriters on the records of DTC will have been made pursuant to the UCC, (IV) to the extent DTC, or any other securities intermediary which acts as "clearing corporation" with respect to the Securities, maintains any "financial asset" (as defined in Section 8-102(a)(9) of the UCC) in a clearing corporation pursuant to Section 8-111 of the UCC, the rules of such clearing corporation may affect the rights of DTC or such securities intermediaries and the ownership interest of the Underwriters, (V) claims of creditors of DTC or any other securities intermediary or clearing corporation may be given priority to the extent set forth in Section 8-511(b) and 8-511(c) of the UCC and (VI) if at any time DTC or other securities intermediary does not have sufficient Securities to satisfy claims of all of its entitlement holders with respect thereto then all holders will share pro rata in the Securities then held by DTC or such securities intermediary.

(vii) Absence of Manipulation. Such Selling Stockholder has not taken, and will not take, directly or indirectly, any action which is designed to or which constituted or would reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(viii) Absence of Further Requirements. No filing with, or consent, approval, authorization, order, registration, qualification or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency, domestic or foreign, is necessary or required for the performance by each Selling Stockholder of its obligations hereunder or in the Power of Attorney and Custody Agreement, or in connection with the sale and delivery of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except (A) such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the New York Stock Exchange, state securities laws or the rules of FINRA and (B) such consents, approvals, authorizations and orders for which a failure to obtain would not, individually or in the aggregate, reasonably be expected to impair the power or ability of the Selling Stockholders to perform their obligations under this Agreement or to consummate the transactions contemplated hereby.

(ix) No Registration Rights. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, such Selling Stockholder does not have any registration or other similar rights to have any equity or debt securities registered for sale by the Company under the Registration Statement or included in the offering contemplated by this Agreement.

(x) No Free Writing Prospectuses. Such Selling Stockholder has not prepared or had prepared on its behalf or used or referred to, any "free writing prospectus" (as defined in Rule 405), and has not distributed any written materials in connection with the offer or sale of the Securities.

(xi) (A) None of such Selling Stockholders or any of its subsidiaries, or, to the knowledge of such Selling Stockholder, any director, officer, employee, agent, representative, or affiliate thereof, is a Person that is, or is owned or controlled by one or more Persons that are the subject of any Sanctions, or located, organized or resident in a country or territory that is the subject of Sanctions.

(B) The Selling Stockholder will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person to (i) fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions or in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise) or (ii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

(C) Such Selling Stockholder has not knowingly engaged in, is not knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(D) (1) None of such Selling Stockholder or, to the extent applicable, any of its subsidiaries, or, to the knowledge of such Selling Stockholder, any director, officer, employee, agent, representative, or affiliate thereof has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any Government Official in order to influence official action, or to any person in violation of any applicable anti-corruption laws and (2) if such Selling Stockholder is a business entity, such Selling Stockholder and each of its subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein.

(E) If such Selling Stockholder is a business entity, the operations of such Selling Stockholder and each of its subsidiaries are and have been conducted at all times in material compliance with all applicable Anti-Money Laundering Laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving such Selling Stockholder or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Selling Stockholder, threatened

(xii) Lockup. Each such Selling Stockholder has delivered to the Representatives an executed lock-up agreement in substantially the form attached hereto as Exhibit A.

(xiii) ERISA. Such Selling Stockholder is not (A) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (B) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code") or (C) an entity or account deemed to hold "plan assets" of any such plan or account under 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA.

(xiv) No Association with FINRA. Neither such Selling Stockholder nor any of their affiliates directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with any member firm of FINRA or is a person associated with a member (within the meaning of the FINRA By-Laws) of FINRA.

(c) *Officer's Certificates*. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby; and any certificate signed by or on behalf of the Selling Stockholders as such and delivered to the Representatives or to counsel for the Underwriters pursuant to the terms of this Agreement shall be deemed a representation and warranty by such Selling Stockholder to the Underwriters as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Selling Stockholders, severally and not jointly, agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from each Selling Stockholder, at the price per share set forth in Schedule A, that proportion of the number of Initial Securities set forth in Schedule B opposite the name of such Selling Stockholder, as the case may be, which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, bears to the total number of Initial Securities, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) *Option Securities*. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Selling Stockholders, acting severally and not jointly, hereby grant an option to the Underwriters, severally and not jointly, to purchase up to an additional [•] shares of Common Stock, as set forth in Schedule B, at the price per share set forth in Schedule A, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted may

be exercised for 30 days after the date hereof and may be exercised in whole or in part at any time from time to time upon notice by the Representatives to the Selling Stockholders setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) *Payment*. Payment of the purchase price for, and delivery of certificates or security entitlements for, the Initial Securities shall be made at the offices of Latham & Watkins LLP, or at such other place as shall be agreed upon by the Representatives and the Company and the Selling Stockholders, at 9:00 A.M. (New York City time) on the second (third, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company and the Selling Stockholders (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates or security entitlements for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company and the Selling Stockholders, on each Date of Delivery as specified in the notice from the Representatives to the Company and the Selling Stockholders.

Payment shall be made to the Selling Stockholders by wire transfer of immediately available funds to bank accounts designated by the Custodian pursuant to each Selling Stockholder's Power of Attorney and Custody Agreement against delivery to the Representatives for the respective accounts of the Underwriters of certificates or security entitlements for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Morgan Stanley, BofAS and Goldman Sachs, individually and not as representatives of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

SECTION 3. Covenants of the Company and the Selling Stockholders. The Company and, with respect to Section 3(l) only, each Selling Stockholder covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests*. The Company, subject to Section 3(b), will comply with the requirements of Rule 430A, and will notify the Representatives promptly, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale

in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) *Continued Compliance with Securities Laws*. The Company will comply with the 1933 Act and the 1933 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations ("Rule 172"), would be) required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representatives notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representatives with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representatives or counsel for the Underwriters shall reasonably object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company will give the Representatives notice of its intention to make any filing pursuant to the 1934 Act or the 1934 Act Regulations from the Applicable Time to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be.

(c) *Delivery of Registration Statements*. The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith), and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses*. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications*. The Company will use its reasonable efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158*. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under "Use of Proceeds."

(h) *Listing.* The Company will use its best efforts to effect and maintain the listing of the Common Stock (including the Securities) on the New York Stock Exchange.

(i) *Restriction on Sale of Securities*. During a period of 180 days from the date of the Prospectus, the Company will not, and will not publicly disclose an intention to, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file or confidentially submit any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (C) any shares of Common Stock or restricted stock awards issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (D) any shares of Common Stock or restricted stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (E) the filing by the Company of a registration statement on Form S-8 covering the registration of any shares of Common Stock or other securities issued under existing employee benefits plan of the Company described in the Registration Statement, the General Disclosure Package and the Prospectus, (F) the issuance of shares of Common Stock in connection with the acquisition by the Company or any of its subsidiaries of the securities, business, property or other assets of another person or business entity or pursuant to any

employee benefit plan assumed by the Company in connection with such acquisition or (G) the issuance of shares of Common Stock, of restricted stock or of options to purchase shares of Common Stock, in each case, in connection with joint ventures, commercial relationships or other strategic transactions; provided, that the aggregate number of shares of Common Stock that the Company may sell or issue or agree to sell or issue pursuant to this clause (G) does not exceed 10.0% of the total number of shares of Common Stock issued and outstanding immediately following the completion of the transactions contemplated by this Agreement; and provided, further, that all such recipients of shares of Common Stock shall execute and deliver to the Representatives, on or prior to such issuance, an agreement substantially in the form of Exhibit A hereto.

(j) *Release or Waiver of Lock-Up*. If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a lock-up agreement described in Section 5(k) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit B hereto through a major news service at least two business days before the effective date of the release or waiver.

(k) *Reporting Requirements*. The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Shares as may be required under Rule 463 under the 1933 Act.

(l) *Issuer Free Writing Prospectuses*. Each of the Company and each Selling Stockholder agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus," or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule C-2 hereto and any "road show that is a written communication" within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives. Each of the Company and each Selling Stockholder represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representatives as an "issuer free writing prospectus," as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(m) *Certification Regarding Beneficial Owners*. The Company and each Selling Stockholder will deliver to the Representatives, on the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers, together with copies of identifying documentation, and the Company and each Selling Stockholder undertake to provide such additional supporting documentation as the Representatives may reasonably request in connection with the verification of the foregoing certification.

(n) *Testing-the-Waters Materials*. If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

(o) *Emerging Growth Company Status*. The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Securities within the meaning of the Securities Act and (ii) completion of the 180-day restricted period referred to in Section 3(i).

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company will pay or cause to be paid all expenses incident to the performance of the obligations of each of the Company and the Selling Stockholders under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and reasonable costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the certificates or security entitlements for the Securities to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto in an amount not to exceed $15,000, (vi) the fees and expenses of any transfer agent or registrar for the Securities, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and 50% of the cost of aircraft and other transportation chartered in connection with the road show (it being understood that the other 50% of the cost of aircraft and other transportation chartered in connection with the roadshow shall be the responsibility of the Underwriters), (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities (provided that the Company shall not be required to pay or reimburse more than $25,000 of the fees and disbursements of such counsel) and (ix) the fees and expenses incurred in connection with the listing of the Securities on the New York Stock Exchange. Except as provided in this Section 4, the Underwriters shall pay all of their own costs and expenses.

(b) *Expenses of the Selling Stockholders*. Notwithstanding paragraph (a) above, (i) the Selling Stockholders will pay any stamp and other duties and stock and other transfer taxes, if any, payable upon the sale of the Securities to the Underwriters and their transfer between the Underwriters pursuant to an agreement between such Underwriters, and (ii) the fees and disbursements of their respective counsel and other advisors.

(c) *Termination of Agreement*. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9(a)(i) or (iii), Section 10 or Section 11 hereof, the Company and the Selling Stockholders shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable and documented fees and disbursements of counsel for the Underwriters.

(d) *Allocation of Expenses*. The provisions of this Section shall not affect any agreement that the Company and the Selling Stockholders may make for the sharing of such costs and expenses.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company and the Selling Stockholders contained herein or in certificates of any officer of the Company or any of its subsidiaries or on behalf of any Selling Stockholder delivered pursuant to the provisions hereof, to the performance by the Company and each Selling Stockholder of their respective covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Rule 430A Information*. The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and, at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes or under Section 8A of the Act have been instituted or are pending or, to the Company's knowledge, contemplated; and the Company has complied with each request (if any) from the Commission for additional information. A prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) without reliance on Rule 424(b)(8) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

(b) *Opinion of Counsel for Company*. At the Closing Time, the Representatives shall have received the opinion and negative assurance letter, dated the Closing Time, of Kirkland & Ellis LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(c) *Opinion of Counsel for the Selling Stockholders*. At the Closing Time, the Representatives shall have received the opinion and negative assurance letter, dated the Closing Time, of Kirkland & Ellis LLP, counsel for the Selling Stockholders, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(d) *Opinion of Counsel for Underwriters*. At the Closing Time, the Representatives shall have received the opinion and negative assurance letter, dated the Closing Time, of Latham & Watkins LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance satisfactory to the Underwriters. In giving such opinion such counsel

may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(e) *Officer's Certificate*. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any Material Adverse Effect, and the Representatives shall have received a certificate of an executive officer of the Company, dated the Closing Time, to the effect that (i) there has been no such Material Adverse Effect, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes or under Section 8A of the Act have been instituted or are pending or, to their knowledge, contemplated.

(f) *Certificate of Selling Stockholders*. At the Closing Time, the Representatives shall have received a certificate of an Attorney-in-Fact on behalf of each Selling Stockholder, dated the Closing Time, to the effect that (i) the representations and warranties of each Selling Stockholder in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time and (ii) each Selling Stockholder has complied with all agreements and all conditions on its part to be performed under this Agreement at or prior to the Closing Time.

(g) *Accountant's Comfort Letter*. At the time of the execution of this Agreement, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(h) *Bring-down Comfort Letter*. At the Closing Time, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (g) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(i) *Approval of Listing*. At the Closing Time, the Securities shall have been approved for listing on the New York Stock Exchange, subject only to official notice of issuance.

(j) *No Objection*. FINRA has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering of the Securities.

(k) *Lock-up Agreements*. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit A hereto signed by the persons listed on Schedule D hereto.

(l) *Maintenance of Rating*. Neither the Company nor its subsidiaries have any debt securities or preferred stock that are rated by any "nationally recognized statistical rating agency" (as defined in Section 3(a)(62) of the 1934 Act).

(m) *Conditions to Purchase of Option Securities*. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company and the Selling Stockholders contained herein and the statements in any certificates furnished by the Company and any of its subsidiaries and the Selling Stockholders hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officer's Certificate. A certificate, dated such Date of Delivery, of an executive officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(e) hereof remains true and correct as of such Date of Delivery.

(ii) Certificate of Selling Stockholders. A certificate, dated such Date of Delivery, of an Attorney-in-Fact on behalf of each Selling Stockholder confirming that the certificate delivered at the Closing Time pursuant to Section 5(f) remains true and correct as of such Date of Delivery.

(iii) Opinion of Counsel for Company. If requested by the Representatives, the opinion and negative assurance letter of Kirkland & Ellis LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iv) Opinion of Counsel for the Selling Stockholders. If requested by the Representative(s), the opinion and negative assurance letter of Kirkland & Ellis LLP, counsel for the Selling Stockholders, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(v) Opinion of Counsel for Underwriters. If requested by the Representatives, the opinion and negative assurance letter of Latham & Watkins LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(d) hereof.

(vi) Bring-down Comfort Letter. If requested by the Representatives, a letter from PricewaterhouseCoopers LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(g) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(n) *Additional Documents*. At the Closing Time and at each Date of Delivery (if any) counsel for the Underwriters shall have been furnished with such documents as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company and the Selling Stockholders in connection with the issuance and sale of the Securities as herein contemplated shall be satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(o) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company and the Selling Stockholders at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 14, 16, 17 and 18 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate")), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities ("Marketing Materials"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, Prospectus or in any Marketing Materials of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(e) below) any such settlement is effected with the written consent of the Company and the Selling Stockholders;

(iii) against any and all reasonably incurred and documented expense whatsoever, as incurred (including the reasonably incurred and documented fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Underwriters by Selling Stockholders*. Each Selling Stockholder, severally and not jointly, agrees to indemnify and hold harmless each Underwriter, its Affiliates and selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act to the extent and in the manner set forth in clauses (a)(i), (ii) and (iii) above and in Section 6(g); provided that each Selling Stockholder shall be liable only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission has been made in the Registration Statement, any preliminary prospectus, the General Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus in reliance upon and in conformity with the information relating to the Selling Stockholders furnished in writing by or on behalf of the Selling Stockholders expressly for use in the Registration Statement, the General Disclosure Package, the Prospectus or any other Issuer Free Writing Prospectus or any amendment or supplement thereto, it being understood and agreed that the only such information furnished by the Selling Stockholders consists of the information relating to the Selling Stockholders (including, for the avoidance of doubt, the number of offered shares) that appears under the caption "Security Ownership of Certain Beneficial Owners" therein; provided, further, that the liability under this subsection of each Selling Stockholder shall be limited to an amount equal to the aggregate gross proceeds after underwriting commissions and discounts, but before expenses, to such Selling Stockholder from the sale of Securities sold by such Selling Stockholder hereunder.

(c) *Indemnification of Company, Directors and Officers and Selling Stockholders*. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, and each Selling Stockholder and each person, if any, who controls any Selling Stockholder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(d) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Sections 6(a) and 6(b) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(c) above, counsel to the indemnified parties shall be selected by the Selling Stockholders. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which

indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) or settlement of any claim in connection with any violation referred to in Section 6(g) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received written notice of the terms of such settlement at least 60 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(f) *[Reserved.]*

(g) *Other Agreements with Respect to Indemnification.* The provisions of this Section shall not affect any agreement among the Company and the Selling Stockholders with respect to indemnification.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholders, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Selling Stockholders, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions, or in connection with any violation of the nature referred to in Section 6(g) hereof, which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company and the Selling Stockholders, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the Selling Stockholders, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company and the Selling Stockholders, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Selling Stockholders or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or any violation of the nature referred to in Section 6(g) hereof.

The Company, the Selling Stockholders and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Shares underwritten by it and distributed to the public and no Selling Stockholder shall be required to contribute any amount in excess of the aggregate net proceeds after underwriting commissions and discounts, but before expenses, received by such Selling Stockholder.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company or any Selling Stockholder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company or such Selling Stockholder, as the case may be. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

The provisions of this Section shall not affect any agreement among the Company and the Selling Stockholders with respect to contribution.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries or the Selling Stockholders submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors, or any person controlling the Company or any person controlling any Selling Stockholder and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination*. The Representatives may terminate this Agreement, by notice to the Company and the Selling Stockholders, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation

thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, or (iv) if trading generally on the NYSE MKT or the New York Stock Exchange or in the Nasdaq Global or Select Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 15, 16, 17 and 18 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail or refuse to at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Selling Stockholders to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company and the Selling Stockholders shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Default by one or more of the Selling Stockholders. If a Selling Stockholder shall fail at the Closing Time or a Date of Delivery, as the case may be, to sell and deliver the number of Securities which such Selling Stockholder or Selling Stockholders are obligated to sell hereunder, and the remaining Selling Stockholders do not exercise the right hereby granted to increase, pro rata or otherwise, the number of Securities to be sold by them hereunder to the total number to be sold by all Selling Stockholders as set forth in Schedule B hereto, then the Underwriters may, at option of the Representatives, by notice from the Representatives to the Company and the non-defaulting Selling Stockholders, either (i) terminate this Agreement without any liability on the fault of any non-defaulting party except that the provisions of Sections 1, 4, 6, 7, 8, 15, 16, 17 and 18 shall remain in full force and effect or (ii) elect to purchase the Securities which the non-defaulting Selling Stockholders have agreed to sell hereunder. No action taken pursuant to this Section 11 shall relieve any Selling Stockholder so defaulting from liability, if any, in respect of such default.

In the event of a default by any Selling Stockholder as referred to in this Section 11, the Representatives shall have the right to postpone the Closing Time or any Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required change in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters, the Company and the Selling Stockholders shall each be directed as follows:

If to the Underwriters:

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036
Attention: Equity Syndicate Desk/Legal Department

and

BofA Securities, Inc.
One Bryant Park
New York, New York 10036
Facsimile: (646) 855-3073 / (212) 230-8730
Attention: Syndicate Department/ECM Legal;

and

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282-2198,
Attention: Registration Department

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Facsimile: (212) 751-4684
Attention: Michael Benjamin

If to the Company:

Torrid Holdings Inc.
18501 E. San Jose Ave.
City of Industry, California 91748
Facsimile: [•]
Attention: George Wehlitz, Jr.

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900
Attention: Joshua N. Korff

If to the Selling Stockholders:

Sycamore Partners Management, L.P.
9 West 57th Street, 31st Floor
New York, New York 10019
Facsimile: [•]
Attention: Stefan Kaluzny

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900
Attention: Joshua N. Korff

SECTION 13. No Advisory or Fiduciary Relationship. Each of the Company and each Selling Stockholder acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company and each Selling Stockholder, on the one hand, and the several Underwriters, on the other hand, and does not constitute a recommendation, investment advice, or solicitation of any action by the Underwriters, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries or any Selling Stockholder, or its respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company or any Selling Stockholder with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries or any Selling Stockholder on other matters) and no Underwriter has any obligation to the Company or any Selling Stockholder with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of each of the Company and each Selling Stockholder, (e) the Underwriters have not provided any legal, accounting, regulatory, investment or tax advice with respect to the offering of the Securities and the Company and each of the Selling Stockholders has consulted its own respective legal, accounting, financial, regulatory, and tax advisors to the extent it deemed appropriate, and (f) none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person.

SECTION 14. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 14, a "BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). "Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). **"**Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. "U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

SECTION 15. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company and the Selling Stockholders and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company and the Selling Stockholders and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company and the Selling Stockholders and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 16. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates), each of the Selling Stockholders and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

SECTION 17. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

SECTION 18. Consent to Jurisdiction; Waiver of Immunity. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the "Specified Courts"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 19. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 20. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Electronic signatures complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law will be deemed original signatures for purposes of this Agreement. Transmission by telecopy, electronic mail or other transmission method of an executed counterpart of this Agreement will constitute due and sufficient delivery of such counterpart.

SECTION 21. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Attorney-in-Fact for the Selling Stockholders a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters, the Company and the Selling Stockholders in accordance with its terms.

Very truly yours,

TORRID HOLDINGS INC.

By _____
Title:

[Signature Page to Underwriting Agreement]

[•]

By _____
As Attorney-in-Fact acting on behalf of the Selling Stockholders named in Schedule B hereto

CONFIRMED AND ACCEPTED,
as of the date first above written:

MORGAN STANLEY & CO. LLC
BOFA SECURITIES, INC.
GOLDMAN SACHS & CO. LLC

By: MORGAN STANLEY & CO. LLC

By _____
Name:
Title:

By: BOFA SECURITIES, INC.

By _____
Name:
Title:

By: GOLDMAN SACHS & CO. LLC

By _____
Name:
Title:

For themselves and as Representatives of the other Underwriters named in Schedule A hereto.

[Signature Page to Underwriting Agreement]

SCHEDULE A

The initial public offering price per share for the Securities shall be $[•].

The purchase price per share for the Securities to be paid by the several Underwriters shall be $[•], being an amount equal to the initial public offering price set forth above less $[•] per share, subject to adjustment in accordance with Section 2(b) for dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

Name of Underwriter	Number of Initial Securities
Morgan Stanley & Co. LLC	[•]
BofA Securities, Inc.	[•]
Goldman Sachs & Co. LLC	[•]
Jefferies LLC	[•]
Robert W. Baird & Co. Incorporated	[•]
Cowen and Company, LLC	[•]
William Blair & Company, L.L.C.	[•]
Telsey Advisory Group LLC	[•]
Total	[•]

SCHEDULE B

	Number of Initial Securities to be Sold	Maximum Number of Option Securities to Be Sold
Sycamore Partners Torrid, L.L.C.	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
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[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
Total	[•]	[•]

SCHEDULE C-1

Pricing Terms

1. The Selling Stockholders are selling [•] shares of Common Stock.

2. The Selling Stockholders have granted an option to the Underwriters, severally and not jointly, to purchase up to an additional [•] shares of Common Stock.

3. The initial public offering price per share for the Securities shall be $[•].

SCHEDULE C-2

Free Writing Prospectuses

[None]

SCHEDULE C-3

Testing-the-Waters Communications

Testing-the-Waters Presentation delivered between June [•], 2021 and June [•], 2021.

SCHEDULE D

List of Persons and Entities Subject to Lock-up

Sycamore Partners Torrid, L.L.C.
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Exhibit A

FORM OF LOCK-UP FROM DIRECTORS, OFFICERS OR OTHER STOCKHOLDERS
TO BE DELIVERED PURSUANT TO SECTION 5(k)

[•], 2021

Morgan Stanley & Co. LLC
BofA Securities, Inc.
Goldman Sachs & Co. LLC

as Representatives of the several Underwriters

listed on Schedule A to the
Underwriting Agreement referred to below

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street,
New York, New York 10282-2198

Re: Proposed Public Offering by Torrid Holdings Inc.

Dear Sirs:

The undersigned, a stockholder, officer and/or director of Torrid Holdings Inc., a Delaware corporation (the "Company"), understands that Morgan Stanley & Co. LLC ("Morgan Stanley"), BofA Securities, Inc. ("BofAS") and Goldman Sachs & Co. LLC ("Goldman Sachs", and, together with Morgan Stanley and BofAS, the "Representatives") propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company and the Selling Stockholders to be named in Schedule B to the Underwriting Agreement providing for the public offering (the "Public Offering") of shares of the Company's common stock, par value $0.01 per share (the "Common Stock") pursuant to a registration statement (the "Registration Statement") filed or to be filed with the U.S. Securities and Exchange Commission (the "SEC"). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder, officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 180 days from the date of the Underwriting Agreement (subject to extensions as discussed below, the "Lock-Up Period"), the undersigned will not, and will not publicly disclose an intention to, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to

purchase or otherwise transfer or dispose of any shares of the Company's Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or exercise any right with respect to the registration of any of the Lock-Up Securities, or file or confidentially submit or cause to be filed or confidentially submitted any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise. If the undersigned is an officer or director of the Company, the undersigned further agrees that the foregoing provisions shall be equally applicable to any issuer-directed securities the undersigned may purchase in the offering.

If the undersigned is an officer or director of the Company, (1) the Representatives agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of the Common Stock, the Representatives will notify the Company of the impending release or waiver, and (2) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (i) the release or waiver is effected solely to permit a transfer not for consideration or to an immediate family member as defined in FINRA Rule 5130(i)(5) and (ii) the transferee has agreed in writing to be bound by the same terms described in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Securities without the prior written consent of the Representatives, provided that (1) in the case of clauses (i) through (vi) below the Representatives receive a signed lock-up agreement for the balance of the Lock-Up Period from each donee, trustee, distributee, or transferee, as the case may be, (2) any such transfer shall not involve a public market disposition for value (other than pursuant to clause (vii)), (3) such transfers, other than with respect to clauses (iii), (vii) or (viii), are not required to be reported with the SEC on Form 4 in accordance with Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), other than any required on Form 5; provided that with respect to this clause (3), any required filing under the Exchange Act shall include a footnote disclosure explaining the nature of, and reason for, such disposition, and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

(i) as a *bona fide* gift or gifts or as charitable contributions; or

(ii) to (a) any immediate family member, (b) any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned or any of their successors upon death, (c) any partnership or limited liability company the partners or members of which consist of the undersigned and one or more members of the undersigned's immediate family (for purposes of this lock-up agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin); or

(iii) as a distribution to limited or general partners, members, affiliates or stockholders of the undersigned;

(iv) to the undersigned's affiliates or to any investment fund or other entity controlled, under common control or managed by the undersigned;

(v) if the undersigned is a trust, to the beneficiary of such trust;

(vi) by operation of law, such as pursuant to a qualified domestic relations order (including a divorce settlement, divorce decree or separation agreement), or by testate succession or intestate succession;

(vii) pursuant to the Underwriting Agreement and any reclassification, conversion or exchange in connection with such sale of Lock-Up Securities;

(viii) to the Company for the primary purposes of satisfying the exercise price on any tax or other governmental withholding obligation with respect to the Lock-Up Securities issued upon the exercise of an option or warrant (or upon the exchange of another security or securities), or issued under an employee equity or benefit plan described in the Registration Statement, in each case on a "cashless" or "net exercise basis";

(ix) to the Company in connection with the repurchase by the Company from the undersigned of shares of Common Stock pursuant to a repurchase right arising upon the termination of the undersigned's employment with the Company; or

(x) with the prior written consent of Morgan Stanley, BofAS, and Goldman Sachs on behalf of the Underwriters.

Furthermore, the foregoing restrictions shall not apply to (i) dispositions of shares of Common Stock of the Company purchased by the undersigned on the open market following the Public Offering if and only if (a) such sales are not required to be reported in any public report or filing with the SEC, or otherwise and (b) the undersigned does not otherwise voluntarily effect any public filing or report regarding such sales, (ii) the exercise of stock options granted pursuant to the Company's equity incentive plans described in the Registration Statement; provided that the foregoing restrictions shall apply to any and all of the Lock-Up Securities issued upon such exercise, (iii) the establishment of any contract, instruction or plan (a "Plan") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; provided that no sales of the Lock-Up Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period; provided further that (a) no public announcement of the establishment or the existence of such Plan, and no report in any public report or any filing with the SEC, or otherwise, shall be required and (b) no such public announcement, report or filing shall be made voluntarily and (iv) transfers, sales, tenders or other dispositions of the Lock-Up Securities occurring after the Public Offering to a bona fide third party pursuant to a tender offer for securities of the Company or any other transaction, including, without limitation, a merger, consolidation or other business combination approved by the board of directors of the Company involving a Change of Control (as defined below) of the Company (including, without limitation, entering into any lock-up, voting or similar agreement pursuant to which the undersigned may agree to transfer, sell, tender or otherwise dispose of the Lock-Up Securities in connection with any such transaction, or vote any of the Lock-Up Securities in favor of any such transaction); provided, that all of the Lock-Up Securities subject to this Agreement remain subject to this Agreement; and provided, further, that it shall be a condition of transfer, sale, tender or other disposition that if such tender offer or other transaction is not completed, any of the Lock-Up Securities subject to this Agreement shall remain subject to the restrictions herein. For purposes of this Agreement, "Change of Control" shall mean the transfer (whether by tender offer, merger,

consolidation or other business combination), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an Underwriter pursuant to the Public Offering), of the Company's voting securities if, after such transfer, such person or group of affiliated persons would hold at least a majority of the outstanding voting securities of the Company (or the surviving entity).

The undersigned acknowledges and agrees that the foregoing precludes the undersigned from engaging in any hedging or other transaction designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition of any shares of Common Stock, or any securities convertible into or exercisable or exchangeable for Common Stock, even if any such sale or disposition transaction or transactions would be made or executed by or on behalf of someone other than the undersigned.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Public Offering of the Shares and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate. The undersigned further acknowledges and agrees that, although the Underwriters may provide certain Regulation Best Interest and Form CRS disclosures or other related documentation to you in connection with the Public Offering, the Underwriters are not making a recommendation to you to participate in the Public Offering or sell any Shares at the price determined in the Public Offering, and nothing set forth in such disclosures or documentation is intended to suggest that any Underwriter is making such a recommendation. The undersigned further understands that this Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors, and assigns.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

The undersigned understands that, notwithstanding anything herein to the contrary, the undersigned shall be released from all obligations under this Agreement and this Agreement shall be terminated and automatically and without further action on the part of any of the parties hereto if (i) the Company notifies the Representatives in writing prior to the execution of the Underwriting Agreement, that it does not intend to proceed with the Public Offering, (ii) the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, (iii) the Company completes an application with the SEC to withdraw the Registration Statement and the Registration Statement is withdrawn or (iv) the Public Offering is not completed by December 31, 2021.

Electronic signatures complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law will be deemed original signatures for purposes of this Agreement. Transmission by telecopy, electronic mail or other transmission method of an executed counterpart of this Agreement will constitute due and sufficient delivery of such counterpart. This Agreement and any claim, controversy or dispute arising under or in relation to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

Very truly yours,

Signature:_____

Print Name:_____

Exhibit B

FORM OF PRESS RELEASE
TO BE ISSUED PURSUANT TO SECTION 3(j)

Torrid Holdings Inc.
[•], 2021

Torrid Holdings Inc. (the "Company") announced today that Morgan Stanley & Co. LLC, BofA Securities, Inc. and Goldman Sachs & Co. LLC, lead book-running managers in the recent public sale of [•] shares of common stock of the Company, are [waiving] [releasing] a lock-up restriction with respect to [•] shares of the Company's common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on [•], 2021, and the shares may be sold on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TORRID HOLDINGS INC.

Torrid Holdings Inc. (the "**Corporation**"), a corporation organized and existing under the General Corporation Law of the State of Delaware ("**DGCL**"), does hereby certify as follows:

(1) The original Certificate of Incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on October 29, 2019 (the "**Certificate of Incorporation**").

(2) The Certificate of Incorporation was amended by the Certificate of Amendment to the Certificate of Incorporation on June 22, 2021.

(3) This Amended and Restated Certificate of Incorporation (as amended or modified from time to time, this "**Amended and Restated Certificate of Incorporation**") was duly adopted in accordance with Sections 228, 242 and 245 of the DGCL.

(4) This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of the Corporation in its entirety.

(5) The text of the Certificate of Incorporation hereby is amended and restated in entirety as follows:

ARTICLE I
NAME

The name of the Corporation is "Torrid Holdings Inc.".

ARTICLE II
REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is Corporation Trust Company.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the DGCL.

ARTICLE IV
CAPITAL STOCK

I. Authorized Capital.

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 1,005,000,000, which shall be divided into two classes as follows: 1,000,000,000 shares of common stock, par value $0.01 per share ("**Common Stock**") and 5,000,000 shares of preferred stock, par value $0.01 per share ("**Preferred Stock**").

The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then-outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either the Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

II. Common Stock.

A. Voting Rights. Except as otherwise provided in this Amended and Restated Certificate of Incorporation or otherwise required by applicable law, each holder of Common Stock shall be entitled to one vote for each share of Common Stock held as of the applicable record date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

B. Dividends. Subject to the preferences applicable to any series of Preferred Stock, if any, outstanding at any time, the holders of Common Stock shall be entitled to share equally, on a per share basis, in such dividends and other distributions of cash, property or shares of stock of the Corporation as may be declared by the Board of Directors of the Corporation (the "**Board**") from time to time with respect to the Common Stock out of assets or funds of the Corporation legally available therefor.

C. Liquidation. Subject to the preferences applicable to any series of Preferred Stock, if any, outstanding at any time, and after payment or provision for payment of the debts and other liabilities of the Corporation, in the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, all assets of the Corporation of whatever kind available for distribution to the holders of Common Stock shall be divided among and paid ratably to the holders of Common Stock.

III. Preferred Stock.

A. Preferred Stock may be issued, at any time and from time to time, by the Corporation for such consideration as may be fixed by the Board. The Board is hereby expressly authorized, by resolution or resolutions, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix, without further stockholder approval, the designation of such series, the powers (including voting powers, if any), preferences and relative, participating, optional and other special rights, if any, and any qualifications, limitations or restrictions thereof, of such series of Preferred Stock and the number of shares of such series, and as may be permitted by the DGCL. The powers, preferences and relative, participating, optional and other special rights of, and the qualifications, limitations or restrictions thereof, of each series of Preferred Stock, if any, may differ from those of any and all other series at any time outstanding.

B. Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

C. Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled to only such voting rights, if any, as shall expressly be granted thereto by this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to such series of Preferred Stock).

ARTICLE V
AMENDMENT OF THE CERTIFICATE OF INCORPORATION AND BYLAWS

A. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, from and after the date on which Investors (as defined below) cease to beneficially own at least 50% of the outstanding shares of Common Stock (the "**Trigger Event**"), the following provisions in this Amended and Restated Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of Common Stock entitled to vote thereon: Article V, Article VI, Article VII, Article VIII, Article IX and Article X. For the purposes of this Amended and Restated Certificate of Incorporation, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). For the purposes of this Amended and Restated Certificate of Incorporation, except for Article IX, (i) "**Affiliate**" shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) "**Person**" shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity, whether domestic or foreign; (iii) "**control**" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise; and (iv) "**Investors**" shall mean Sycamore Partners Management, L.P., Sycamore Partners Torrid, L.L.C. and each of their respective Affiliates.

B. The Board is expressly authorized to make, repeal, alter, amend and rescind, in whole or in part, the bylaws of the Corporation (as in effect from time to time, the "**Bylaws**") without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Amended and Restated Certificate of Incorporation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation or

any provision of law which might otherwise permit a lesser vote of the stockholders, from and after the Trigger Event, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designation relating to any series of Preferred Stock), the Bylaws or applicable law, the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

ARTICLE VI
BOARD OF DIRECTORS

A. Except as otherwise provided in this Amended and Restated Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any certificate of designation with respect to any series of Preferred Stock) and this Article VI relating to the rights of the holders of any series of Preferred Stock to elect additional directors, the total number of directors shall be determined from time to time exclusively by resolution adopted by the Board. The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. Class I directors shall initially serve for a term expiring at the first annual meeting of stockholders following the date the Common Stock is first publicly traded (the "**IPO Date**"), Class II directors shall initially serve for a term expiring at the second annual meeting of stockholders following the IPO Date and Class III directors shall initially serve for a term expiring at the third annual meeting of stockholders following the IPO Date. At each succeeding annual meeting, successors to the class of directors whose term expires at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her death, resignation, retirement, disqualification or removal from office. The Board is authorized to assign members of the Board already in office to their respective class.

B. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding, any newly-created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled by a majority of the directors then in office, even if less than a quorum, by a sole remaining director or by the stockholders; *provided, however,* that from and after the Trigger Event, any newly-created directorship on the Board that results from an increase in the number of directors and any vacancy occurring on the Board shall be filled only by a majority of the directors then in office, even if less than a quorum,

or by a sole remaining director (and not by the stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

C. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed at any time either with or without cause by the affirmative vote of a majority in voting power of all outstanding shares of Common Stock entitled to vote thereon; *provided, however*, that from and after the Trigger Event, any such director or all such directors may be removed only for cause and only by the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

D. Elections of directors need not be by written ballot unless the Bylaws shall so provide.

E. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, retirement, disqualification or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of the Corporation shall be reduced accordingly.

ARTICLE VII
LIMITATION OF DIRECTOR LIABILITY

A. To the fullest extent permitted by the DGCL as it now exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty owed to the Corporation or its stockholders.

B. Neither the amendment nor repeal of this Article VII, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation, nor, to the fullest extent permitted by the DGCL, any modification of law shall eliminate, reduce or otherwise adversely affect any right or protection of a current or former director of the Corporation existing at the time of such amendment, repeal, adoption or modification.

ARTICLE VIII
CONSENT OF STOCKHOLDERS IN LIEU OF MEETING;
ANNUAL AND SPECIAL MEETINGS OF STOCKHOLDERS

A. Prior to the Trigger Event, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand, overnight courier or by certified or registered mail, return receipt requested. From and after the Trigger Event, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; *provided*, *however*, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

B. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes may only be called in the manner provided in the Bylaws.

C. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed in the manner provided in the Bylaws.

ARTICLE IX
COMPETITION AND CORPORATE OPPORTUNITIES

A. In recognition and anticipation that (i) certain directors, principals, members, officers, associated funds, employees and/or other representatives of one or more of the Investors and their respective Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (ii) one or more of the Investors and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) members of the Board who are not employees of the Corporation (the "**Non-Employee Directors**") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article IX are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain

classes or categories of business opportunities as they may involve any of the Investors, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

B. None of (i) the Investors or any of their respective Affiliates or (ii) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) or his or her Affiliates (the Persons (as defined below) identified in (i) and (ii) above being referred to, collectively, as "**Identified Persons**" and, individually, as an "**Identified Person**") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section D of this Article IX. Subject to Section D of this Article IX, in the event that any Identified Person acquires knowledge of a potential transaction or other matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

C. The Corporation and its Affiliates do not have any rights in and to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

D. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation) if such opportunity is expressly offered to such person in writing solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section B of this Article IX shall not apply to any such corporate opportunity.

E. In addition to and notwithstanding the foregoing provisions of this Article IX, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

F. For purposes of this Article IX, (i) "**Affiliate**" shall mean (a) in respect of any Investor, any Person that, directly or indirectly, is controlled by such Investor, controls such Investor or is under common control with such Investor and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (b) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (c) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "**Person**" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity; (iii) "**control**" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise; and (iv) "**Investor**" shall mean Sycamore Partners Management, L.P., Sycamore Partners Torrid, L.L.C. and each of their respective Affiliates.

G. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article IX. Neither the alteration, amendment, addition to or repeal of this Article IX, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) inconsistent with this Article IX, shall eliminate or reduce the effect of this Article IX in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article IX, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

ARTICLE X
DGCL SECTION 203

A. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

ARTICLE XI
MISCELLANEOUS

A. If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (ii) to the fullest

extent permitted by applicable law, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

B. Exclusive Forum.

(i) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or employee of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the DGCL or this Amended and Restated Certificate of Incorporation or the Bylaws (as either may be amended and/or restated from time to time) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (4) any action asserting a claim against the Corporation or any director or officer of the Corporation governed by the internal affairs doctrine.

(ii) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

(iii) To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section B of Article XI.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, Torrid Holdings Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer on this [●]th day of [●], 2021.

Torrid Holdings Inc.

By: _____
Name:
Title:

Exhibit 3.2

AMENDED AND RESTATED BYLAWS
OF
TORRID HOLDINGS INC.

A Delaware corporation
(Adopted as of , 2021)

ARTICLE I
OFFICES

Section 1.01 Registered Office. The registered office and registered agent of Torrid Holdings Inc. (the "**Corporation**") in the State of Delaware shall be as set forth in the Amended and Restated Certificate of Incorporation (as defined below). The name of the Corporation's registered agent at such address is Corporation Trust Company. The Corporation may also have offices in such other places in the United States or elsewhere (and may change the Corporation's registered agent) as the Board of Directors of the Corporation (the "**Board**") may, from time to time, determine or as the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.01 Annual Meetings. Annual meetings of stockholders of the Corporation may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board shall determine and state in the notice of meeting. The Board may, in its sole discretion, determine that any meeting of stockholders of the Corporation shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 hereof and in accordance with the General Corporation Law of the State of Delaware (the "**DGCL**"). At the annual meeting, the stockholders of the Corporation shall elect directors and transact such other business as may properly be brought before the annual meeting. The Board may postpone, reschedule or cancel any annual meeting of stockholders of the Corporation.

Section 2.02 Special Meetings. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock (as defined in the the Corporation's Amended and Restated Certificate of Incorporation as then in effect (as the same may be amended and/or restated from time to time, the "**Amended and Restated Certificate of Incorporation**")), special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time only by or at the direction of the Board or the Chairman of the Board; *provided*, *however*, that at any time before the Trigger Event (as defined in the Amended and Restated Certificate of Incorporation), special meetings of the stockholders of the Corporation for any purpose or purposes shall also be called by or at the direction of the Board or the Chairman of the Board at the request of the holders of 50% or more of the voting power of all the outstanding shares of Common Stock (as defined in the Amended and Restated Certificate of Incorporation). Special meetings of the stockholders of the Corporation may be held at such place, if any, either within or without the State of Delaware, and at such time and date as determined by the Board, the Chairman of the Board, the Chief Executive Officer of the Corporation (the "**CEO**") and, before the Trigger Event, by or at the direction of the Board, the Chairman of the Board or the CEO at the request of holders of 50% or more of the voting power of all the outstanding shares of Common Stock. The

Board may postpone, reschedule or cancel any special meeting of stockholders of the Corporation; *provided*, *however*, that with respect to any special meeting of stockholders of the Corporation previously scheduled at the request of holders of 50% or more of the voting power of all the outstanding shares of Common Stock, the Board shall not postpone, reschedule or cancel such special meeting without the prior written consent of such holders.

Section 2.03 Notice of Stockholder Business and Nominations; Form and Requirements of Notice.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders of the Corporation may be made at an annual meeting of stockholders of the Corporation only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 2.04 hereof; (b) by or at the direction of the Board or any authorized committee thereof; or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who, subject to Section 2.03(C)(4) hereof, complies with the notice procedures set forth in Sections 2.03(A)(2) and (A)(3) hereof and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation (the "**Secretary**"), on the record date for the determination of stockholders of the Corporation entitled to vote at the annual meeting, and at the time of the annual meeting.

(2) Without qualification, for nominations or other business to be properly brought before an annual meeting by a stockholder of the Corporation pursuant to Section 2.03(A)(1)(c) hereof, the stockholder must have given timely notice thereof in writing to the Secretary, and, in the case of business other than nominations of persons for election to the Board, such other business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation in writing not later than the Close of Business (as defined below) on the 90th day nor earlier than the Close of Business on the 120th day prior to the first anniversary of the preceding year's annual meeting (which anniversary date shall, for purposes of the Corporation's first annual meeting of stockholders of the Corporation after the shares of its Common Stock, are first publicly traded (the "**First Annual Meeting**"), be deemed to have occurred on July 13, 2021); *provided*, *however*, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after the anniversary date of the previous year's meeting, or if no annual meeting was held in the preceding year (other than in connection with the First Annual Meeting), notice by a stockholder of the Corporation to be timely must be so delivered not earlier than the Close of Business on the 120th day prior to such annual meeting and not later than the Close of Business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which Public Announcement (as defined below) of the date of such meeting is first made. In no event shall the adjournment or postponement of an annual meeting (or the Public Announcement of the adjournment or postponement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following expiration of the

time periods set forth in these Bylaws. Notwithstanding anything in this Section 2.03(A)(2) to the contrary, if the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 2.03(A)(2) and there is no Public Announcement naming all of the nominees for the additional directorships or specifying the size of the increased Board at least 100 days prior to the first anniversary of the prior year's annual meeting of stockholders of the Corporation, then a stockholder's notice required by this Section 2.03(A)(2) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary at the principal executive offices of the Corporation in writing not later than the Close of Business on the 10th day following the day on which such Public Announcement is first made.

(3) To be in proper form, a stockholder's notice to the Secretary (the stockholder providing such notice, the "**Noticing Stockholder**") under this Section 2.03(A) must:

(a) as to each person whom the Noticing Stockholder proposes to nominate for election or re-election as a director, set forth or provide (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person (present and for the past five years), (iii) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and/or of record by such person (*provided*, *however*, that for purposes of this Section 2.03(A)(3)(a), such person shall in all events be deemed to beneficially own any shares of the Corporation as to which such person has a right to acquire beneficial ownership of at any time in the future), (iv) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest or that is otherwise required pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations promulgated thereunder, (v) a complete and accurate description of any current or prior agreements, arrangements and understandings, and any other material relationships between or among the Noticing Stockholder, any beneficial owner on whose behalf the nomination or proposal is made (collectively with the Noticing Stockholder, the "**Holders**"), any of their respective affiliates and associates within the meaning of Rule 12b-2 under the Exchange Act, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K (or any successor provision) if any Holder, any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant, (vi) a complete and accurate description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings (whether written or oral) during the past three years, between or among any Holder, any of its affiliates or associates, or others acting in concert therewith, on the one hand, and each nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on

the other hand, (vii) a notarized letter signed by such person stating his or her acceptance of the nomination by the Holder, stating his or her intention to serve as a director for a full term on the Board, if elected, and consenting to being named as a nominee for director in a proxy statement relating to such election, (viii) a completed and signed questionnaire and written representation and agreement, each as may be required by Section 2.03(A)(4) hereof and (ix) all information relating to the nominee that would be required by this Section 2.03(A) to be set forth in a stockholder's notice with respect to a director nomination if such nominee were a stockholder providing notice of a director nomination to be made at the meeting;

(b) as to any business that the Noticing Stockholder proposes to bring before the meeting, set forth or provide (i) a brief description of the business desired to be brought before the meeting, (ii) the text, if any, of the proposal (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Amended and Restated Bylaws ("**Bylaws**") of the Corporation, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting and any material interest in such business of any Holder and (iv) a complete and accurate description of any current or prior agreements, arrangements and understandings, and any other material relationships between or among the Holders, any of their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, in connection with the proposal of such business by such Noticing Stockholder, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K (or any successor provision) if any Holder, any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(c) as to the Holders, set forth (i) the name and address of the Noticing Stockholder as they appear on the Corporation's books, (ii) the name and address of all other Holders, if any, (iii) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and/or of record by each Holder (*provided*, *however*, that for purposes of this Section 2.03(A)(3)(c), any such person shall in all events be deemed to beneficially own any shares of the Corporation as to which such person has a right to acquire beneficial ownership of at any time in the future), any person controlling, directly or indirectly, or acting in concert with, any Holder and any person controlled by or under common control with any Holder, (iv) the Ownership Information (as defined below) for each Holder and Stockholder Associated Person (as defined below), (v) a representation by the Noticing Stockholder that the Noticing Stockholder is a stockholder of record of the Corporation entitled to vote at the meeting, will continue to be a stockholder of record of the Corporation entitled to vote at such meeting through the date of such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation as to whether any Holder intends or is part of a group which intends to (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the outstanding shares

of the Corporation required to approve or adopt the proposal or elect the nominee and/or (B) otherwise solicit proxies from stockholders of the Corporation in support of such proposal or nomination, (vii) a certification regarding whether each Holder has complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares or other securities of the Corporation and such Holder's acts or omissions as a stockholder of the Corporation and (viii) the Noticing Stockholder's representation as to the accuracy of the information set forth in the notice.

The Corporation may also, as a condition to any such nomination or business being deemed properly brought before an annual meeting, request any Holder or proposed nominee to deliver to the Secretary, within five Business Days of any such request, including such other information as may be reasonably requested by the Corporation, including, without limitation, such other information as may be reasonably required by the Board, in its sole discretion, to determine (i) the eligibility of a proposed nominee to serve as a director of the Corporation, (ii) whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (iii) such other information that the Board determines, in its sole discretion, could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

A Noticing Stockholder shall further update and supplement its notice of any nomination or other business proposed to be brought before a meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.03 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is 10 business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the meeting), or any adjournment, recess, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof).

Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by law, if the Noticing Stockholder (or a qualified representative of the Noticing Stockholder) does not appear at the meeting of stockholders of the Corporation and present his or her proposed business or nomination(s), such proposed business will not be transacted and any such nomination will be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.03, to be considered a qualified representative of a stockholder of the Corporation, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) stating that such person is authorized to act for such stockholder as a proxy at the meeting of stockholders of the Corporation, and such person must produce proof that he or she is a duly authorized officer, manager or partner of such stockholder or such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, as well as valid government-issued photo identification, at the meeting of stockholders of the Corporation.

Notwithstanding anything to the contrary contained in these Bylaws, if the person whom the Noticing Stockholder proposes to nominate for election or re-election as a director pursuant to the notice procedures set forth in Sections 2.03(A)(2) and (A)(3) hereof becomes ineligible or unwilling to serve on the Board, the Noticing Stockholder may not, at the annual meeting for which its notice for nomination has previously been given, propose to nominate any substitute, successor or replacement nominee for election or re-election as a director, unless it gives a new timely notice pursuant to Section 2.03(A).

(d) For purposes of this section, "**Ownership Information**" means: (i) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole in or part from the value of any class or series of shares of the Corporation, whether or not the instrument or right is subject to settlement in the underlying class or series of shares of the Corporation or otherwise (a "**Derivative Instrument**") that is directly or indirectly owned beneficially by any Holder, Stockholder Associated Person or proposed nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of any security of the Corporation; (ii) any agreement, arrangement or understanding (including any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) between any Holder, Stockholder Associated Person, proposed nominee and/or any others acting in concert with any of the foregoing the intent or effect of which may be to transfer to or from any such person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation or to increase or decrease the voting power of any such person or any of such person's affiliates or associates with respect to any security of the Corporation; (iii) any proxy, contract, arrangement, understanding or relationship pursuant to which any Holder, Stockholder Associated Person or proposed nominee has a right to vote or has granted a right to vote any shares of the Corporation; (iv) any short interest held by any Holder, Stockholder Associated Person or proposed nominee presently or within the last 12 months in any shares of the Corporation (for purposes of this Section 2.03, a Holder, Stockholder Associated Person or proposed nominee is deemed to hold a short interest in a security if such Holder, Stockholder Associated Person or proposed nominee, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security); (v) any right to dividends on shares of the Corporation owned beneficially by any Holder, Stockholder Associated Person or proposed nominee that is separated or separable from the underlying shares of the Corporation; (vi) any proportionate interest in shares of the Corporation; (vii) any Derivative Instrument held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which any Holder, Stockholder Associated Person or proposed nominee is (a) a general partner or,

directly or indirectly, beneficially owns any interest in a general partner, or (b) is the manager or managing member or, directly or indirectly, beneficially owns any interest in the manager or managing member of a limited liability company or similar entity; (vii) any performance-related fees (other than an asset-based fee) that any Holder, Stockholder Associated Person or proposed nominee is entitled to based on any increase or decrease in the value of shares of the Corporation or any Derivative Instrument; (viii) any direct or indirect legal, economic or financial interest (including short interest) of any Holder, Stockholder Associated Person or proposed nominee in the outcome of any vote to be taken at any annual or special meeting of stockholders of the Corporation or any other entity with respect to any matter that is substantially related, directly or indirectly, to any nomination or business proposed by any Holder under this Bylaw and; (ix) any arrangement, right or other interest described in the preceding clauses of this paragraph held by any member of the immediate family of any Holder, Stockholder Associated Person or proposed nominee that shares the same household with such Holder or Stockholder Associated Person. "**Stockholder Associated Person**" means as to any Holder (x) any person acting in concert with such Holder, (y) any person controlling, controlled by or under common control with such Holder or any of their respective affiliates and associates, or person acting in concert therewith and (z) any member of the immediate family of such Holder or an affiliate or associate of such Holder. As used in these Bylaws, the terms "affiliate(s)" and "associate(s)" shall have the meanings attributed to such terms in Rule 12b-2 under the Exchange Act and the rules and regulations promulgated thereunder.

(4) To be eligible to be a nominee for election or reelection as a director of the Corporation pursuant to this Section 2.03, a proposed nominee must deliver (in the case of nominee nominated by a stockholder of the Corporation pursuant to this Section 2.03, in accordance with the time periods and other requirements prescribed for delivery of notice under these Bylaws and applicable law) to the Secretary at the principal executive offices of the Corporation (i) a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (in the form to be provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) and (ii) a written representation and agreement (in the form to be provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote in such capacity on any issue or question (a "**Voting Commitment**") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (C) if elected as director of the

Corporation, intends to serve for a full term on the Board and (D) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable laws and all applicable rules of the U.S. exchanges upon which the securities of the Corporation are listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and other guidelines of the Corporation duly adopted by the Board.

(B) Special Meetings of Stockholders of the Corporation. Only such business shall be conducted at a special meeting of stockholders of the Corporation as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders of the Corporation at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board or (2) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote at the meeting, who (subject to Section 2.03(C)(4)) complies with the notice procedures set forth in this Section 2.03 and who is a stockholder of record at the time such notice is delivered to the Secretary at the principal executive offices of the Corporation, on the record date for the determination of stockholders of the Corporation entitled to vote at the special meeting and at the time of the special meeting. In the event that the Corporation calls a special meeting of stockholders of the Corporation for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required, if such stockholder's notice for a special meeting were for an annual meeting, by Section 2.03(A)(2) hereof shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the Close of Business on the 120th day prior to such special meeting and not later than the Close of Business on the later of the 90th day prior to such special meeting or the 10th day following the day on which Public Announcement is first made of the date of such special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the adjournment or postponement of a special meeting (or the Public Announcement of the adjournment or postponement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. (1) Except as provided in Section 2.03(C)(4) hereof, only such persons who are nominated in accordance with the procedures set forth in this Section 2.03 shall be eligible to serve as a director and only such business shall be conducted at an annual or special meeting of stockholders of the Corporation as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.03. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the chairman of any meeting of stockholders of the Corporation shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded. The date and time of the opening and the closing of the polls for each matter upon which the stockholders of the Corporation will vote at a meeting shall be announced at the meeting by the chairman of the meeting. After the polls close, no ballots,

proxies or votes or any revocations or changes thereto shall be accepted. The Board may adopt by resolution such rules, regulations and procedures for the conduct of the meeting of stockholders of the Corporation as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of the Corporation entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; and (f) restricting the use of cell phones, audio or video recording devices and similar devices at the meeting. Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by law, if the Noticing Stockholder (or a qualified representative of the Noticing Stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Unless and to the extent determined by the Board or the chairman of the meeting, no meeting of stockholders of the Corporation shall be required to be held in accordance with the rules of parliamentary procedure.

(2) Whenever used in these Bylaws, (a) "Public Announcement" shall mean disclosure (i) in a press release issued by the Corporation, provided such press release is issued by the Corporation following its customary procedures, that is reported by the Dow Jones News Service, Associated Press or comparable national news service, or is generally available on internet news sites or (ii) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder; (b) the "**Close of Business**" means 5:00 p.m. local time at the Corporation's principal executive offices, and if an applicable deadline falls on the "Close of Business" on a day that is not a Business Day, then the applicable deadline shall be deemed to be the Close of Business on the immediately preceding Business Day; and (c) "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are authorized or obligated by law or executive order to close. Further, "delivery" of any notice or materials by a stockholder as required under this Section 2.03 shall be made by both (1) hand delivery, overnight courier service, or by certified or registered mail, return receipt required, in each case, to the Secretary at the principal executive offices of the Corporation, and (2) electronic mail to the Secretary at the principal executive offices of the Corporation or such other email address for the Secretary as may be specified in the Corporation's proxy statement for the annual meeting of stockholders immediately preceding such delivery of notice or materials.

(3) Notwithstanding the foregoing provisions of this Section 2.03, the Noticing Stockholder shall also comply with all applicable requirements of the Exchange Act and

the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.03; *provided*, *however*, that, to the fullest extent permitted by law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to these Bylaws (including Sections 2.03 (A)(1)(c) and (B) hereof), and compliance with this Section 2.03 shall be the exclusive means for a stockholder of the Corporation to make nominations or submit other business at any meeting of stockholders of the Corporation (other than business properly brought under and in compliance with Rule 14a-8 of the Exchange Act (or any successor provision)). Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or the rights of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation to elect directors under specified circumstances (including any certificate of designation relating to any series of Preferred Stock (as defined in the Amended and Restated Certificate of Incorporation)).

(4) Notwithstanding anything to the contrary contained in this Section 2.03, prior to the Trigger Event, Investors (as defined in the Amended and Restated Certificate of Incorporation) shall not be subject to the notice procedures set forth in Sections 2.03(A)(2), (A)(3) or (B) hereof with respect to any annual or special meeting of stockholders of the Corporation.

Section 2.04 Notice of Meetings. Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a timely notice in writing or by electronic transmission, in the manner provided in Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders of the Corporation and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders of the Corporation entitled to vote at the meeting, if such date is different from the record date for determining stockholders of the Corporation entitled to notice of the meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed to or transmitted electronically by the Secretary to each stockholder of record entitled to vote thereat as of the record date for determining the stockholders of the Corporation entitled to notice of the meeting. Unless otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of the Corporation entitled to vote at such meeting as of the record date for determining the stockholders of the Corporation entitled to notice of the meeting.

Section 2.05 Quorum. Unless otherwise required by law, the Amended and Restated Certificate of Incorporation or the rules of any stock exchange upon which the Corporation's securities are listed, the holders of record of a majority of the voting power of the issued and outstanding shares of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders of the Corporation. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or

series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on that matter. Once a quorum is present at any meeting, it shall not be broken by the subsequent withdrawal of any stockholder of the Corporation.

Section 2.06 Voting. Except as otherwise provided by or pursuant to the provisions of the Amended and Restated Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders of the Corporation shall be entitled to one vote for each share of Common Stock held by such stockholder that has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders of the Corporation or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy in any manner provided by applicable law, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder of the Corporation may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a written revocation of the proxy or a new proxy bearing a later date. Unless required by the Amended and Restated Certificate of Incorporation or applicable law, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the voting power of the shares of the Corporation present in person or represented by proxy and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of the Amended and Restated Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding anything to the contrary in these Bylaws and subject to the Amended and Restated Certificate of Incorporation, all elections of directors shall be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 2.07 Chairman of Meetings. The Chairman of the Board, if one is elected, or, in his or her absence or disability, the CEO, or in the absence of the Chairman of the Board and the CEO, a person designated by the majority of the directors shall be the chairman of the meeting and, as such, shall preside at all meetings of the stockholders of the Corporation.

Section 2.08 Secretary of Meetings. The Secretary shall act as secretary at all meetings of the stockholders of the Corporation. In the absence or disability of the Secretary, the chairman of the meeting shall appoint a person to act as secretary at such meetings.

Section 2.09 Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only in the manner provided in the Amended and Restated Certificate of Incorporation and in accordance with applicable law.

Section 2.10 Adjournment. The chairman of any meeting of stockholders of the Corporation shall have the power to adjourn the meeting from time to time, whether or not a quorum is present. At any meeting of stockholders of the Corporation, if less than a quorum be present, the chairman of the meeting or stockholders of the Corporation holding a majority in voting power of the shares of stock of the Corporation, present in person or by proxy and entitled to vote thereat, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present. Any business may be transacted at the adjourned meeting that might have been transacted at the meeting originally noticed. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders of the Corporation entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders of the Corporation entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders of the Corporation entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

Section 2.11 Remote Communication. If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may, by means of remote communication:

(A) participate in a meeting of stockholders of the Corporation; and

(B) be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; *provided*, *however*, that:

(1) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder;

(2) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(3) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.12 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of stockholders of the Corporation, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so

appointed or designated is able to act at a meeting of stockholders of the Corporation, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of the Corporation outstanding and the voting power of each such share, (b) determine the shares of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

ARTICLE III
BOARD OF DIRECTORS

Section 3.01 Powers. Except as otherwise provided in the Amended and Restated Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not, by the DGCL or the Amended and Restated Certificate of Incorporation, directed or required to be exercised or done by the stockholders of the Corporation.

Section 3.02 Number and Term; Chairman. Subject to the Amended and Restated Certificate of Incorporation, the number of directors shall be fixed exclusively by resolution of the Board. The term of each director elected to the Board shall be as set forth in the Amended and Restated Certificate of Incorporation. Directors need not be stockholders of the Corporation. The Board shall elect a Chairman of the Board, who shall have the powers and perform such duties as provided in these Bylaws and as the Board may from time to time prescribe. The Chairman of the Board shall preside at all meetings of the Board at which he or she is present. If the Chairman of the Board is not present at a meeting of the Board, the CEO (if the CEO is a director and is not also the Chairman of the Board) shall preside at such meeting, and, if the CEO is not present at such meeting or is not a director, a majority of the directors present at such meeting shall elect one of their members to preside.

Section 3.03 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board, the Chairman of the Board, the CEO or the Secretary. The resignation shall take effect at the time or upon the happening of any event specified therein, and if no specification is so made, at the time of its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise expressly provided in the resignation.

Section 3.04 Removal. Directors of the Corporation may be removed in the manner provided in the Amended and Restated Certificate of Incorporation and applicable law.

Section 3.05 Vacancies and Newly-Created Directorships. Except as otherwise provided by applicable law, vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly-created directorships resulting from any increase in the number of directors shall be filled in accordance with the Amended and Restated Certificate of Incorporation. Any director elected to fill a vacancy or newly-created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

Section 3.06 Meetings. Regular meetings of the Board may be held at such places and times as shall be determined from time to time by the Board, either within or without the State of Delaware. Special meetings of the Board may be called by the CEO of the Corporation or the Chairman of the Board or as provided by the Amended and Restated Certificate of Incorporation, and shall be called by the CEO or the Secretary if directed by the Board and shall be at such places and times as they or he or she shall fix. Before the Trigger Event, special meetings of the Board may also be called by holders of 50% or more of the voting power of all the outstanding shares of Common Stock, and shall be at such places and times as such holders shall fix. Notice need not be given of regular meetings of the Board. At least 24 hours before each special meeting of the Board, written notice, notice by electronic transmission or oral notice (either in person or by telephone) of the time, date and place of the meeting shall be given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting of the Board.

Section 3.07 Quorum, Voting and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business at a meeting of the Board. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at a meeting of the Board at which a quorum is present shall be the act of the Board. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

Section 3.08 Committees; Committee Rules. The Board may, by resolution passed by a majority of the directors, designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The meetings of any such committee shall be held in compliance with these Bylaws. The Board may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board establishing such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it. Notwithstanding the foregoing, no committee shall have the power or authority of the Board in reference to the following matters: (a) approving or adopting, or recommending to the stockholders of the Corporation, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders of the Corporation for approval or (b) adopting, amending or repealing any Bylaw of the Corporation. All committees of the Board shall keep minutes of their meetings and shall report their proceedings to the Board when requested or required by the Board. Each

committee of the Board may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board designating such committee. Unless otherwise provided in such a resolution, (i) the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum for the transaction of business at a meeting of the committee unless the committee shall consist of one or two members, in which event one member shall constitute a quorum and (ii) all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. In the absence of a quorum, a majority of the directors present may adjourn the meeting of the committee to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member, to the extent permitted by applicable law.

Section 3.09 Action Without a Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed in the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form.

Section 3.10 Remote Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, members of the Board, or any committee designated by the Board, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

Section 3.11 Compensation. The Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Section 3.12 Reliance on Books and Records. A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation or the Board.

ARTICLE IV
OFFICERS

Section 4.01 Number. The officers of the Corporation shall include a CEO, a Chief Financial Officer and a Secretary, each of whom shall be elected by the Board and who shall hold office for such terms as shall be determined by the Board and until their successors are elected and qualify or until their earlier resignation or removal. In addition, the Board may elect one or more Vice Presidents, including one or more Executive Vice Presidents, Senior Vice Presidents, a Treasurer and one or more Assistant Treasurers and one or more Assistant Secretaries, who shall hold their office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. Any number of offices may be held by the same person.

Section 4.02 Other Officers and Agents. The Board may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board. The Board may appoint one or more officers called a Vice Chairman, each of whom does not need to be a member of the Board.

Section 4.03 Chief Executive Officer. The CEO shall have general executive charge, management, and control of the properties and operations of the Corporation in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. If the Board has not elected a Chairman of the Board or in the absence or inability to act as the Chairman of the Board, the CEO shall exercise all of the powers and discharge all of the duties of the Chairman of the Board, but only if the CEO is a director of the Corporation.

Section 4.04 Chief Financial Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the Chairman of the Board or the Board of Directors; shall receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the Corporation; shall have such powers and perform such duties as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or these Bylaws may, from time to time, prescribe. The Treasurer, if any, shall in the absence or disability of the Chief Financial Officer, perform the duties and exercise the powers of the chief financial officer, subject to the power of the board of directors. The Treasurer, if any, shall perform such other duties and have such other powers as the board of directors may, from time to time, prescribe.

Section 4.05 Vice Presidents. Each Vice President, if any are appointed, of whom one or more may be designated an Executive Vice President or Senior Vice President, shall have such powers and shall perform such duties as shall be assigned to him or her by the CEO or the Board.

Section 4.06 Secretary. The Secretary shall: (a) cause minutes of all meetings of the stockholders of the Corporation and directors to be recorded and kept properly; (b) cause all notices required by these Bylaws or otherwise to be given properly; (c) see that the minute books, stock books and other nonfinancial books, records and papers of the Corporation are kept properly; and (d) cause all reports, statements, returns, certificates and other documents to be prepared and filed when and as required. The Secretary shall have such further powers and perform such other duties as prescribed from time to time by the CEO or the Board.

Section 4.07 Assistant Treasurers and Assistant Secretaries. Each Assistant Treasurer and each Assistant Secretary, if any are appointed, shall be vested with all the powers and shall perform all the duties of the Treasurer and Secretary, respectively, in the absence or disability of such officer, unless or until the CEO or the Board shall otherwise determine. In addition, Assistant Treasurers and Assistant Secretaries shall have such powers and shall perform such duties as shall be assigned to them by the CEO or the Board.

Section 4.08 Corporate Funds and Checks. The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board or its designees selected for such purposes. All checks or other orders for the payment of money shall be signed by the CEO, the Chief Financial Officer, a Vice President, the Treasurer or the Secretary or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board.

Section 4.09 Contracts and Other Documents. The CEO and the Secretary, or such other officer or officers as may from time to time be authorized by the Board or any other committee given specific authority in the premises by the Board during the intervals between the meetings of the Board, shall have power to sign and execute on behalf of the Corporation deeds, conveyances and contracts and any and all other documents requiring execution by the Corporation.

Section 4.10 Ownership of Stock of Another Corporation. Unless otherwise directed by the Board, the CEO, the Chief Financial Officer, a Vice President, the Treasurer or the Secretary, or such other officer or agent as shall be authorized by the Board, shall have the power and authority, on behalf of the Corporation, to attend and to vote at any meeting of securityholders of any entity in which the Corporation holds securities or equity interests and may exercise, on behalf of the Corporation, any and all of the rights and powers incident to the ownership of such securities or equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Corporation.

Section 4.11 Delegation of Duties. In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board may delegate to another officer such powers or duties.

Section 4.12 Resignation and Removal. Any officer of the Corporation may be removed from office for or without cause at any time by the Board. Any officer may resign at any time in the same manner prescribed under Section 3.03 hereof.

Section 4.13 Vacancies. The Board shall have the power to fill vacancies occurring in any office.

Section 4.14 Compensation. Compensation of all executive officers shall be approved by the Board, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation; *provided*, *however*, that compensation of all executive officers may be determined by a committee established for that purpose if so authorized by the unanimous vote of the Board.

ARTICLE V
STOCK

Section 5.01 Shares With Certificates. The shares of stock of the Corporation shall be represented by certificates; *provided*, *however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by any two authorized officers of the Corporation (it being understood that each of the Chairman of the Board, the Vice Chairman of the Board, the CEO, the Chief Financial Officer, or a Vice President, the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation shall be an authorized officer for such purpose), certifying the number and class of shares of the Corporation owned by such holder. Any or all of the signatures on the certificate may be a facsimile. The Board shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars.

Section 5.02 Shares Without Certificates. If the Board chooses to issue shares of stock without certificates, the Corporation, if required by the DGCL, shall, within a reasonable time after the issuance or transfer of shares without certificates, send the stockholder of the Corporation a written statement of the information required by the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates; *provided*, *however*, that the use of such system by the Corporation is permitted by applicable law.

Section 5.03 Transfer of Shares. Shares of stock of the Corporation shall be transferable upon its books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, in the manner prescribed by law, the Amended and Restated Certificate of Incorporation and in these Bylaws, upon surrender to the Corporation by delivery thereof (to the extent evidenced by a physical stock certificate) to the person in charge of the stock and transfer books and ledgers. Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of the Corporation that are not represented by a certificate shall be transferred in accordance with applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Board shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issuance, transfer and registration of certificates for shares of stock of the Corporation.

Section 5.04 Lost, Stolen, Destroyed or Mutilated Certificates. A new certificate of stock or uncertificated shares may be issued in the place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed, and the Corporation may, in its discretion, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond, in such sum as the Corporation may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith. A new certificate or uncertificated shares of stock may be issued in the place of any certificate previously issued by the Corporation that has become mutilated upon the surrender by such owner of such mutilated certificate and, if required by the Corporation, the posting of a bond by such owner in an amount sufficient to indemnify the Corporation against any claim that may be made against it in connection therewith.

Section 5.05 List of Stockholders Entitled To Vote. The Corporation shall prepare and make, at least 10 days before every meeting of stockholders of the Corporation, a complete list of the stockholders of the Corporation entitled to vote at the meeting (*provided*, *however*, that if the record date for determining the stockholders of the Corporation entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders of the Corporation entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order and showing the address of each stockholder of the Corporation and the number of shares registered in the name of each such stockholder. Such list shall be open to the examination of any stockholder of the Corporation, for any purpose germane to the meeting at least 10 days prior to the meeting (a) on a reasonably accessible electronic network (*provided*, *however*, that the information required to gain access to such list is provided with the notice of meeting) or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation of the Corporation. If the meeting is to be held at a place, then a list of stockholders of the Corporation entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder of the Corporation during the whole time of the meeting on a reasonably accessible electronic network and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders of the Corporation entitled to examine the list of stockholders of the Corporation required by this Section 5.05 or to vote in person or by proxy at any meeting of stockholders of the Corporation.

Section 5.06 Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders of the Corporation entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders of the Corporation entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the

date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders of the Corporation entitled to notice of or to vote at a meeting of stockholders of the Corporation shall be at the Close of Business on the day next preceding the day on which notice is given, or, if notice is waived, at the Close of Business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders of the Corporation shall apply to any adjournment of the meeting; *provided*, *however*, that the Board may fix a new record date for determination of stockholders of the Corporation entitled to vote at the adjourned meeting and in such case shall also fix as the record date for stockholders of the Corporation entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders of the Corporation entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders of the Corporation entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders of the Corporation for any such purpose shall be at the Close of Business on the day on which the Board adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, in order that the Corporation may determine the stockholders of the Corporation entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. Subject to the provisions of the Amended and Restated Certificate of Incorporation, any stockholder of record seeking to have the stockholders of the Corporation authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board fix a record date, which notice shall include the text of any proposed resolution. If no record date for determining stockholders of the Corporation entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (a) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law and (b) if prior action by the Board is required by law, the record date for such purpose shall be at the Close of Business on the day on which the Board adopts the resolution taking such prior action.

Section 5.07 Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock or notification to the Corporation of the transfer of uncertificated shares with a request to record the transfer of such share or shares, the Corporation may treat the registered owner of such share or shares as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such share or shares. To the fullest extent permitted by law, the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VI
NOTICE AND WAIVER OF NOTICE

Section 6.01 Notice. If mailed, notice to stockholders of the Corporation shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder of the Corporation at such stockholder's address as it appears on the records of the Corporation, and if given by any other form, including any form of electronic transmission permitted by the DGCL shall be deemed given as provided in the DGCL. Without limiting the manner by which notice otherwise may be given effectively to stockholders of the Corporation, any notice to stockholders of the Corporation may be given by electronic transmission in the manner provided in Section 232 of the DGCL. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

Section 6.02 Waiver of Notice. A written waiver of any notice, signed by a stockholder of the Corporation or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting (in person or by remote communication) shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VII
INDEMNIFICATION

Section 7.01 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (each a "**proceeding**"), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "**indemnitee**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, if permitted, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; *provided*, *however*, that, except as provided in Section 7.03 hereof with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 7.02 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 7.01 hereof, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII (which shall be governed by Section 7.03 hereof) (hereinafter an "**advancement of expenses**"); *provided*, *however*, that, if the DGCL requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including service to an employee benefit plan) shall be made solely upon delivery to the Corporation of an undertaking (an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "**final adjudication**") that such indemnitee is not entitled to be indemnified or entitled to advancement of expenses under Sections 7.01 and 7.02 hereof or otherwise.

Section 7.03 Right of Indemnitee to Bring Suit. If a claim under Section 7.01 or 7.02 hereof is not paid in full by the Corporation within (a) 45 days after a written claim for indemnification has been received by the Corporation or (b) 20 days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the indemnitee shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL and (b) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

Section 7.04 Indemnification Not Exclusive.

(A) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article VII, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article VII, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders of the Corporation or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(B) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of all expenses judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of the Amended and Restated Certificate of Incorporation or these Bylaws (or any other agreement between the Corporation and such persons) in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article VII, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Any obligation on the part of any indemnitee-related entities to indemnify or advance expenses to any indemnitee shall be secondary to the Corporation's obligation and shall be reduced by any amount that the indemnitee may collect as indemnification or advancement from the Corporation. The Corporation irrevocably waives, relinquishes and releases the indemnitee-related entities from any and all claims against the indemnitee-related entities for contribution, subrogation or any other recovery of any kind in respect thereof. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 7.04(B), entitled to enforce this Section 7.04(B).

For purposes of this Section 7.04(B), the following terms shall have the following meanings:

(1) The term "**indemnitee-related entities**" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company,

partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(2) The term "**jointly indemnifiable claims**" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to Delaware law, any agreement or Amended and Restated Certificate of Incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

Section 7.05 Corporate Obligations; Reliance. The rights granted pursuant to the provisions of this Article VII shall vest at the time a person becomes a director or officer of the Corporation and shall be deemed to create a binding contractual obligation on the part of the Corporation to the persons who from time to time are elected as officers or directors of the Corporation and such persons in acting in their capacities as officers or directors of the Corporation or any subsidiary shall be entitled to rely on such provisions of this Article VII without giving notice thereof to the Corporation. Such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 7.06 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 7.07 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE VIII
MISCELLANEOUS

Section 8.01 Electronic Transmission. For purposes of these Bylaws, "**electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 8.02 Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Chief Financial Officer, the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.03 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 8.04 Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 8.05 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Amended and Restated Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

Section 8.06 Severability. If any provision of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of these Bylaws and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

ARTICLE IX
AMENDMENTS

Section 9.01 Amendments. The Board is authorized to make, repeal, alter, amend and rescind, in whole or in part, these Bylaws without the assent or vote of the stockholders of the Corporation in any manner not inconsistent with the laws of the State of Delaware or the Amended and Restated Certificate of Incorporation. Before the Trigger Event, the affirmative vote of the holders of a majority in voting power of all the then-outstanding shares of Common Stock entitled to vote thereon shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith. Notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders of the Corporation, from and after the Trigger Event, in addition to any vote of the holders of any class or series of shares of the Corporation required by the Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock), these Bylaws or applicable law, the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of Common Stock entitled to vote thereon shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these Bylaws (including this Section 9.01) or to adopt any provision inconsistent herewith.

[*Remainder of Page Intentionally Left Blank*]

Exhibit 5.1

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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New York, NY 10022
United States

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June 23, 2021

Torrid Holdings Inc.
18501 E. San Jose Ave.
City of Industry, CA 91748

Ladies and Gentlemen:

We are acting as special counsel to Torrid Holdings Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing of a Registration Statement on Form S-1, originally filed with the Securities and Exchange Commission (the "Commission") on June 7, 2021 (File No. 333-256871), under the Securities Act of 1933, as amended (the "Act") (such Registration Statement, as amended or supplemented and including the exhibits thereto, is hereinafter referred to as the "Registration Statement"), relating to the proposed registration by the Company of 9,200,000 shares of common stock, par value $0.01 per share, of the Company ("Common Stock"), including 8,000,000 shares of Common Stock to be sold by the selling stockholders (the "Selling Stockholders") identified in the Registration Statement (the "Firm Shares") and up to 1,200,000 shares of Common Stock to be sold by the Selling Stockholders to cover the underwriters' option to purchase additional shares from the Selling Stockholders, if any (the "Option Shares" and, together with the Firm Shares, the "Shares"). The offering of the Shares is referred to herein as the "Offering."

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary for the purposes of this opinion, including (i) the Amended and Restated Certificate of Incorporation of the Company in the form filed as Exhibit 3.1 to the Registration Statement and to be filed with the Secretary of State of the State of Delaware prior to the sale of any Shares (the "New Charter"); (ii) the Amended and Restated Bylaws of the Company in the form filed as Exhibit 3.2 to the Registration Statement to be adopted by the board of directors of the Company prior to the sale of any Shares (the "New Bylaws"); (iii) the Underwriting Agreement in the form filed as Exhibit 1.1 to the Registration Statement (the "Underwriting Agreement"); (iv) resolutions of the board of directors of the Company; and (v) the Registration Statement.

For purposes of this opinion, we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies. We have also assumed the legal capacity of all natural persons, the genuineness of the signatures of persons signing all documents in connection with which this opinion is rendered, the authority of such persons signing on behalf of the parties thereto and the due authorization, execution and delivery of all documents by the parties thereto other than the Company. We have not independently established or verified any facts relevant to the opinion expressed herein, but have relied upon statements and representations of officers and other representatives of the Company and others as to factual matters.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we are of the opinion that, upon (i) the filing of the New Charter with the Secretary of State for the State of Delaware and the effectiveness thereof under Delaware law, (ii) the adoption of the New Bylaws by the board of directors of the Company, (iii) the due execution and delivery of the Underwriting Agreement by the parties thereto, and (iv) the effectiveness of the Registration Statement under the Act, the Shares (including any Option Shares) will have been duly authorized and will be validly issued, fully paid and non-assessable.

Our opinions expressed above are subject to the qualifications that we express no opinion as to the applicability of, compliance with, or effect of any laws except the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. We also consent to the reference to our firm under the heading "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or "Blue Sky" laws of the various states to the Offering.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. We assume no obligation to revise or supplement this opinion should the General Corporation Law of the State of Delaware be changed by legislative action, judicial decision or otherwise.

This opinion is furnished to you in connection with the filing of the Registration Statement.

Sincerely,

/s/ KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS LLP

Exhibit 10.1

EXECUTION VERSION

$260,000,000

TERM LOAN CREDIT AGREEMENT

Dated as of June 14, 2019

among

TORRID INC.,
as Holdings,

TORRID LLC,
as the Borrower,

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and Collateral Agent,

and

THE LENDERS PARTY HERETO

KKR CREDIT ADVISORS (US) LLC,

as Structuring Advisor

KKR CAPITAL MARKETS LLC,

as Sole Lead Arranger and Bookrunner

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P	Specified Discount Prepayment Response
Q	Intercompany Subordination Agreement

TERM LOAN CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT (this "**Agreement**") is entered into as of June 14, 2019, by and among Torrid Inc., a Delaware corporation ("**Holdings**"), Torrid LLC, a California limited liability company and direct subsidiary of Holdings (the "**Borrower**"), KKR Credit Advisors (US) LLC, as Structuring Advisor, Cortland Capital Market Services LLC, as administrative agent (in such capacity, including any successor thereto, the "**Administrative Agent**") and as collateral agent (in such capacity, including any successor thereto, the "**Collateral Agent**") under the Loan Documents, and each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**").

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders make available on the Closing Date to the Borrower up to $260,000,000 of Closing Date Term Loans, on the terms and conditions set forth herein, the proceeds of which will be used for the purposes set forth in Section 6.14.

The proceeds of the Closing Date Term Loans, together with borrowings under the ABL Facility, will be used on the Closing Date (i) to consummate the Closing Date Refinancing, (ii) to pay the Transaction Expenses and (iii) to the extent any such proceeds remain after the foregoing uses, for general corporate purposes not prohibited by the terms of this Agreement.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

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

ARTICLE I

Definitions and Accounting Terms

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

"**2018 Audited Financial Statements**" means the audited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of the fiscal year ended February 2, 2019, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year.

"**2019 ABL Amendment**" means that certain First Amendment to the ABL Credit Agreement, dated as of the date hereof, by and among the Borrower, Holdings, the ABL Facility Administrative Agent and the lenders party thereto.

"**ABL Commitments**" means "Commitments" as defined in the ABL Credit Agreement.

"**ABL Credit Agreement**" means the ABL Credit Agreement dated as of October 23, 2017, as amended by the 2019 ABL Amendment, among Holdings, the Borrower, the ABL Facility Administrative Agent and the several banks and other financial institutions from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time, in each case to the extent permitted hereunder and under the ABL Intercreditor Agreement and any Refinancing Indebtedness thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Credit Agreement) in each case to the extent permitted hereunder.

"**ABL Cure Amount**" means "Cure Amount" as defined in the ABL Credit Agreement.

"**ABL Cure Right**" means "Cure Right" as defined in the ABL Credit Agreement.

"**ABL Event of Default**" means "Event of Default" as defined in the ABL Credit Agreement.

"**ABL Facility**" means the asset-based credit facility governed by the ABL Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans, notes or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof), in each case to the extent permitted or not restricted by this Agreement.

"**ABL Facility Administrative Agent**" means Bank of America, N.A. in its capacity as administrative agent under the ABL Credit Agreement or any successor agent under the ABL Loan Documents.

"**ABL Financial Covenant**" means the covenant set forth in Section 7.15 of the ABL Credit Agreement.

"**ABL Intercreditor Agreement**" means the ABL Intercreditor Agreement substantially in the form of Exhibit G-1 among the Collateral Agent, Bank of America, N.A., as collateral agent under the ABL Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**ABL Lenders**" means the "Lenders" as defined in the ABL Credit Agreement.

"**ABL Loan Documents**" means, collectively, (i) the ABL Credit Agreement and (ii) any security documents, intercreditor agreements (including the ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the ABL Credit Agreement or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Refinancing Indebtedness under the ABL Credit Agreement (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Loan Document).

"**ABL Loans**" means "Loans" as defined in the ABL Credit Agreement.

"**ABL Obligations**" means "Obligations" as defined in the ABL Credit Agreement.

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

"**Acceptable Discount**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acceptable Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Acceptance and Prepayment Notice**" means a notice of the Borrower's acceptance of the Acceptable Discount in substantially the form of Exhibit M.

"**Acceptance Date**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Subsidiary of such specified Person and not incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Additional Lender**" means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (b) Replacement Loans pursuant to Section 10.01; *provided* that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed), in each case solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender.

"**Adjusted EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h) and (l)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees and costs of surety bonds in connection with financing activities; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, provincial, territorial, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations), and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash expenses, charges, expenses, losses or items (including any write-offs or write-downs) reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Subsidiary deducted (and not added back) in such period to Consolidated Net Income, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreement or otherwise to the extent otherwise permitted under Section 7.06 and (ii) the amount of payments made to option holders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to shareholders of such Person or its Parent Companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

(g) the amount of loss or discount on sale of Securitization Assets in connection with a Qualified Securitization Facility; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Adjusted EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Adjusted EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interest of such Person (other than Disqualified Stock); *plus*

(j) [reserved]; *plus*

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus*

(l) (I) pro forma adjustments, including pro forma "run rate" cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to acquisitions, dispositions and other Specified Transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within six fiscal quarters after the date of consummation of such acquisition, disposition or other Specified Transaction or the initiation of such restructuring

initiative, cost savings initiative or other initiatives and (II) pro forma "run rate" cost savings, operating expense reductions and synergies (in each case, net of amounts actually realized) related to the Transactions that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within six fiscal quarters after the Closing Date (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken); *provided* that amounts added back pursuant to this clause (l) and together with any similar adjustments made in accordance with Section 1.07(3), when combined with adjustments pursuant to clause (n) below and clause (1) of the definition of "Consolidated Net Income" shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis; *provided*, *further*, that such cap shall not apply to adjustments made in accordance with Regulation S-X; *provided*, *further*, in the case of the forgoing clauses (l)(I), such adjustments shall be permitted only to the extent they are supported by a certificate executed by a Financial Officer of the Borrower and delivered to the Administrative Agent; *plus*

(m) any payments in the nature of compensation or expense reimbursement made to independent board members to the extent customary for similarly situated businesses; *plus*

(n) costs, charges, reserves and expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other synergies and similar initiatives and business optimization and other restructuring and integration charges; *provided* that amounts added back pursuant to this clause (n), when combined with adjustments pursuant to clause (l) above (together with any similar adjustments made in accordance with Section 1.07(3)), and clause (1) of the definition of "Consolidated Net Income" shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis; *plus*

(o) adjustments and addbacks reflected in the financial model provided to the Structuring Advisor on February 27, 2019 (together with updates and modifications thereto reasonably agreed to by the Structuring Advisor prior to the Closing Date; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Adjusted EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Adjusted EBITDA in accordance with this definition),

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned subsidiary added (and not deducted in such period from Consolidated Net Income), and

(c) any net gain from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period.

Adjusted EBITDA of the Borrower and its Subsidiaries will be deemed to equal (i) $32,900,000 for the fiscal quarter ended May 5, 2018, (ii) $29,000,000 for the fiscal quarter ended August 4, 2018, (iii) $22,900,000 for the fiscal quarter ended November 3, 2018 and (iv) $20,200,000 for the fiscal quarter ended February 2, 2019, in each case and, without duplication, adjusted to reflect any pro forma adjustments with respect to any relevant Specified Transaction as are appropriate and consistent with the pro forma adjustment provisions set forth in Section 1.07, in each case, occurring or identified after the Closing Date and not otherwise included in the calculation of the foregoing amounts.

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

"**Administrative Agent Fee Letter**" means that certain Administrative Agent Fee Letter, dated as of the date hereof, by and among the Administrative Agent, the Collateral Agent and the Borrower.

"**Administrative Agent's Account**" means the account from time to time designated by the Administrative Agent as the account to which payments hereunder are to be directed. "**Administrative Questionnaire**" means, with respect to each Lender, an administrative questionnaire in the form provided by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Affiliate Transaction**" has the meaning specified in Section 7.06.

"**After Year-End Payment**" has the mean specified in Section 2.05(2).

"**Agent Indemnitees**" shall have the meaning provided for in Section 10.05

"**Agent Parties**" has the meaning specified in Section 10.02(4).

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

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

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

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

"**Agreement Currency**" has the meaning specified in Section 10.26.

"**AHYDO Payment**" means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is required to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Code Section 163(i).

"**All-In Yield**" means, with respect to any term loan facility or other term loans, as of any date of determination, the sum of (i) the higher of (A) the LIBOR Rate, on such date for a deposit in Dollars with a maturity of three months and (B) the LIBOR Rate "floor," if any, with respect thereto as of such date, (ii) the Applicable Rate (or other applicable margin) as of such date for LIBOR Rate Loans (or other loans that accrue interest by reference to a similar reference rate) and (iii) the amount of original issue discount and upfront fees thereon (converted to yield assuming a four-year average life and without any present value discount), but excluding the effect of any arrangement, structuring, syndication or similar fees payable in connection therewith that are not shared with all lenders or holders of such term loan facility or other term loans; *provided* that the amounts set forth in clauses (i) and (ii) above for any term loans that are not incurred under this Agreement shall be based on the stated interest rate basis for such term loans.

"**Anti-Corruption Laws**" means the U.S. Foreign Corrupt Practices Act of 1977, including the regulations thereunder and as amended from time to time, the UK Bribery Act of 2010, and any other similar applicable law or regulation related to corruption or bribery.

"**Anti-Corruption Prohibited Activity**" has the meaning set forth in Section 5.21.

"**Anti-Money Laundering Laws**" means laws, regulations, rules or guidelines relating to the prevention of money laundering, including financing recordkeeping and reporting requirements, such as the USA PATRIOT Act, the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, and the U.S. Money Laundering Control Act of 1986, as amended.

"**Applicable Discount**" has the meaning specified in Section 2.05(1)(e)(C)(2).

"**Applicable Intercreditor Agreement**" means (a) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that (i) are intended to rank equal in priority to the Liens on the ABL Priority Collateral securing the ABL Obligations and (ii) are intended to rank junior in priority to the Liens on the Term Priority Collateral securing the Obligations, the ABL Intercreditor Agreement, (b) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank equal in priority to the Liens on the Collateral securing the Obligations (but without regard to control of remedies), each of the ABL Intercreditor Agreement and the Term Intercreditor Agreement, (c) to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement), the Term Intercreditor Agreement and the ABL Intercreditor Agreement and (d) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank junior in priority to the Liens securing the Obligations and the Junior Priority Debt Obligations, a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Liens on the Collateral securing the Obligations and the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement).

"**Applicable Rate**" means a percentage per annum equal to, with respect to Closing Date Term Loans, (i) until delivery of financial statements and a related Compliance Certificate for the first full fiscal quarter commencing on or after the Closing Date pursuant to Sections 6.01(1) or 6.01(2), as applicable, (A) for LIBOR Rate Loans, 6.75% and (B) for Base Rate Loans, 5.75% and (ii) thereafter, the percentages per annum set forth in the table below, based upon the Total Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(1):

Total Net Leverage Ratio	Base Rate Loans	LIBOR Rate Loans
> 3.00:1.00	6.00%	7.00%
≤ 3.00:1.00 and > 2.00:1.00	5.75%	6.75%
≤ 2.00:1.00	5.50%	6.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(1).

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Total Net Leverage Ratio set forth in any Compliance Certificate delivered to the Administrative Agent is inaccurate for any reason and the result thereof is that the Lenders received interest or fees for any period based on an Applicable Rate that is less than that which would have been applicable had the Total Net Leverage Ratio been accurately determined, then, for all purposes of this Agreement, the "**Applicable Rate**" for any day occurring within the period covered by such Compliance Certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Total Net Leverage Ratio for such period, and any shortfall in the interest theretofore paid by the Borrower for the relevant period pursuant to Section 2.08 as a result of the miscalculation of the Total Net Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of Section 2.08 at the time the interest for such period was required to be pursuant to such Section (and shall remain due and payable until paid in full), in accordance with the terms of this Agreement); *provided* that, notwithstanding the foregoing, so long as an Event of Default described in Section 8.01(6) has not occurred with respect to the Borrower, such shortfall shall be due and payable five (5) Business Days following the determination described above.

In addition, at any time during which the Borrower shall have failed to deliver financial statements pursuant to Sections 6.01(1) or 6.01(2), as applicable, and a related Compliance Certificate, the "**Applicable Rate**" for any day occurring within the period covered by such Compliance Certificate shall be deemed to be the Applicable Rate for the immediately preceding period until such Compliance Certificate is delivered, at which point any increase or decrease in the Applicable Rate resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date such Compliance Certificate is delivered.

Notwithstanding the foregoing, the Applicable Rate with respect to any Term Loans (other than Closing Date Term Loans), shall be as specified in the applicable Extension Amendment, Refinancing Amendment or amendment in respect of Replacement Loans.

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

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

"**Arranger**" means KKR Capital Markets LLC, in its capacity as lead arranger under this Agreement.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer, license, lease, assignment or other disposition (including sale-leaseback transactions), whether direct or indirect or in a single transaction or a series of related transactions of property or assets of the Borrower or any Subsidiary (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Subsidiaries issued in compliance with Section 7.02 and directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Subsidiary (other than to the Borrower or another Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course, (iii) [reserved], (iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and (v) [reserved];

(b) the disposition of any assets by the Borrower or any Subsidiary in a manner permitted pursuant to Section 7.03;

(c) any disposition in connection with the making of any a Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or an acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Subsidiary with an aggregate fair market value of less than (i) $1,000,000 for any individual transaction or series of related transactions and (ii) $2,000,000 for all such transactions in any fiscal year;

(e) any disposition of property or assets or issuance of securities by a Subsidiary to the Borrower or by the Borrower or a Subsidiary to a Subsidiary to the extent permitted under this Agreement;

(f) [reserved];

(g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

(h) [reserved];

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited hereunder;

(j) dispositions of Securitization Assets in connection with any Qualified Securitization Facility or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) [reserved];

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof, in each case in the ordinary course of business or consistent with industry practice;

(m) the licensing or sublicensing of IP Rights or other general intangibles in the ordinary course of business; *provided* that such license or sublicense shall be on a non-exclusive basis and shall be consummated with Persons that do not constitute Affiliates of Holdings or any of its Subsidiaries, otherwise such license or sublicense shall constitute an Asset Sale;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary put, drag or tag arrangements (or other provisions with similar effect) between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse or abandonment of IP Rights, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder; and

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property.

"**Assignee Group**" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

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

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

"**Auction Agent**" means (a) the Administrative Agent or any of its Affiliates (unless the Administrative Agent, in its sole discretion, declines to act in such capacity hereunder) or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(1)(e); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided further* that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

"**Available Amount**" means, at any time (the "**Available Amount Reference Time**"), an amount (which shall not be less than zero) equal to the sum of:

(1) $10,000,000; *plus*

(2) the Retained Excess Cash Flow Amount; *plus*

(3) the amount of any Net Proceeds from any Permitted Equity Issuance of Holdings or any Parent Company thereof to the extent contributed to the Borrower as Qualified Equity Interests and the fair market value of any capital contributions made in cash, Cash Equivalents and other property, in each case, to the extent Not Otherwise Applied (and excluding, the amount of any (w) ABL Cure Amount, (x) Cure Amount and (y) any non-cash capital contributions in excess of $1,000,000)) in each case during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; *plus*

(4) (i) the cash proceeds of any Indebtedness of the Borrower and any of its Subsidiaries issued after the Closing Date (other than Disqualified Stock or Indebtedness issued to the Borrower or any of its Subsidiaries) which has been converted into or exchanged for Capital Stock of the Borrower, any Subsidiary or any Parent Company that does not constitute Disqualified Stock during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; *plus*

(5) the Net Proceeds received by the Borrower or any Subsidiary from any Permitted Investments plus returns, profits, distributions and similar amounts received in cash or Cash Equivalents (and non-cash returns, profits, distributions and similar amounts in an amount not to exceed $1,000,000 during the period from the Business Day immediately following the Closing Date through and including the Available Amount Reference Time) by the Borrower and its Subsidiaries from Permitted Investments, in each case, not to exceed the original amount of such Investment; *plus*

(6) the aggregate amount of remaining Declined Proceeds during the period from the Business Day immediately following the Closing Date through and including the Available Amount Reference Time, so long as such Declined Proceeds have first been offered to non-declining Lenders as set forth Section 2.05(2)(g); *plus*

(7) [reserved]; *minus*

(8) the aggregate amount of Restricted Payments made with the Available Amount pursuant to clause (10)(B) of Section 7.05(b) (without duplication of clause (5) above, net of any return of capital in respect of any Investments or deemed reduction in the amount of such Investment, including upon sale, transfer, lease or other disposition of any such Investments and, in each case, not to exceed the original amount of such Investment (without giving effect to the last sentence of the definition thereof), during the period commencing on the Closing Date through and including the Available Amount Reference Time (and, for purposes of this clause (8), without taking account of the intended usage of the Available Amount at such Available Amount Reference Time).

"**Average ABL Amount**" means, for purposes of determining the outstanding amount of the ABL Facility as of any applicable date of determination, such outstanding amount shall be the annual average daily amount of Loans (as defined in the ABL Credit Agreement) of the Borrower and its Subsidiaries thereunder outstanding during the applicable Test Period; *provided* that, to the extent any Test Period includes periods ending prior to the Closing Date, with respect to such periods, Consolidated Total Debt and Consolidated First Lien Debt shall be calculated based on the annual average daily amount of Loans (as defined in the ABL Credit Agreement) outstanding under the ABL Credit Agreement for the applicable portion of the Test Period that occurred prior to the Closing Date.

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

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

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

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its "prime rate"; (b) the Federal Funds Rate for such day, *plus* 0.50%; and (c) the LIBOR Rate for a one month interest period as determined on such day, *plus* 1.00%. The "prime rate" is a rate of interest last quoted by *The Wall Street Journal* as the "prime rate" in the U.S. or, if *The Wall Street Journal* ceases to publish for any reason such rate of interest, "prime rate" is the highest per annum interest published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate released by the Federal Reserve Board (as reasonably determined by the Administrative Agent and the Borrower). .Any change in Wall Street Journal's prime rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

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

"**Basket**" means any amount, threshold or other value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

"**Board of Directors**" means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of the Borrower.

"**Borrower**" has the meaning specified in the introductory paragraph to this Agreement and upon the consummation of any transaction permitted by Section 7.03(4), the Successor Borrower.

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

"**Borrower Offer of Specified Discount Prepayment**" means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

"**Borrower Parties**" means the collective reference to Holdings, the Borrower and each Subsidiary of the Borrower and "**Borrower Party**" means any of them.

"**Borrower Solicitation of Discount Range Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(C).

"**Borrower Solicitation of Discounted Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(D).

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

"**Business Day**" means any day that is not a Legal Holiday and, when used in connection with Base Rate Loans or LIBOR Rate Loans or otherwise in respect of Obligations of any Loan Party, the term "Business Day" shall also exclude any day on which commercial banks in the State of New York are authorized or required by law to remain closed; *provided* that when used in connection with any LIBOR Rate Loans, the term "**Business Day**" shall also exclude any day on which the banks are not open for dealings in Dollar deposits in the London interbank market.

"**Canadian Dollar**" and "**C$**" mean lawful money of Canada.

"**Canadian Loan Party**" means any Loan Party incorporated or otherwise organized under the laws of Canada or any province or territory thereof.

"**Canadian Subsidiary**" means any Subsidiary incorporated or otherwise organized under the laws of Canada or any province or territory thereof.

"**CapEx Financial Covenant**" has the meaning specified in Section 7.10(2).

"**CapEx Threshold Amount**" has the meaning specified in Section 7.10(2).

"**Capital Expenditures**" means, with respect to any Person for any period, all expenditures paid in cash, in each case that are (or should be) set forth as capital expenditures in a consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP; *provided* that "Capital Expenditures" shall not include (a) any additions, replacements, restorations or substitutions to property, plant and equipment and other capital expenditures made with (i) any proceeds from dispositions of fixtures, furniture or equipment that (x) do not constitute Asset Sales or (y) are applied in accordance with Section 2.05(2)(b)(ii), (ii) proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Loan Parties or (iii) the cash proceeds of any Equity Interests issued or capital contributions in cash received by any Loan Party or any Subsidiary that is applied to any such capital expenditures contemporaneously with the receipt of such cash amounts by any such Loan Party or Subsidiary, (b) any expenditures that are (i) accounted for as capital expenditures of such person and that actually are paid for by a third party (excluding Holdings, the Borrower or any Subsidiary thereof) and for which neither Holdings, the Borrower nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period) or (ii) financed with tenant improvement allowances (or similar real estate incentive programs), or (c) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business; *provided* that the aggregate amount excluded from "Capital Expenditures" in any four fiscal quarter period under this clause (c) shall not exceed $500,000.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

(2) in the case of a ULC, shares or other equity interests in the capital of such ULC;

(3) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(4) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(5) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

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

"**Capitalized Software Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Subsidiaries.

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

"**Cash Equivalents**" means:

(1) Dollars;

(2) Canadian Dollars;

(3) local currencies held by the Borrower or any Subsidiary from time to time in the ordinary course of business or consistent with industry practice;

(4) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(5) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any domestic or foreign commercial bank having capital and surplus of not less than $625,000,000 million in the case of U.S. banks and $125,000,000 million in the case of non-U.S. banks;

(6) repurchase obligations for underlying securities of the types described in clauses (4) and (5) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (5) above;

(7) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of acquisition thereof;

(8) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency);

(9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any of the foregoing or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof;

(10) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 24 months or less from the date of acquisition;

(11) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(12) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency); and

(13) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (12) above.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

"**Cash Management Agreement**" means any agreement entered into from time to time by Holdings, the Borrower or any Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"**Cash Management Bank**" means any Person that is an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of an ABL Facility Administrative Agent or an ABL Lender at the time it entered into a Cash Management Agreement, whether or not such Person subsequently ceases to be an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of an ABL Facility Administrative Agent or an ABL Lender.

"**Cash Management Obligations**" means obligations owed by Holdings, the Borrower or any Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

"**Cash Management Services**" means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

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

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Code in which stock is owned directly or indirectly within the meaning of Section 958(a) of the Code by one or more United States shareholders within the meaning of 951(b) of the Code that is a Loan Party or a direct or indirect owner of a Loan Party.

"**Change in Law**" means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111 203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

"**Change of Control**" means the occurrence of any of the following after the Closing Date:

(1) at any time prior to the consummation of a Qualifying IPO after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or any Parent Company; or

(2) at any time following the consummation of a Qualifying IPO after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act) of Equity Interests of the Borrower or such Parent Company representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or such Parent Company, as applicable, and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower or such Parent Company, as applicable, beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

(3) [reserved]; or

(4) Holdings shall cease to be the registered owner of 100% of the Equity Interests of the Borrower unless in connection with the consummation of a Qualifying IPO by the Borrower;

unless, in the case of clause (1) or (2) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Borrower or any Parent Company.

"**Claim**" means any actions, suits or written demands or claims.

"**Class**" means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., "fungibility")) and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

"**Closing Date**" means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, and the Closing Date Term Loans are made to the Borrower pursuant to Section 2.01, which date was June 14, 2019.

"**Closing Date Refinancing**" means (i) the redemption and/or repayment (or otherwise defeasance) of the Secured Notes in their entirety, (ii) the termination and/or release of all guarantees and security granted in connection therewith and (iii) the termination and release in full of the Hot Topic Guarantee, in each case other than contingent indemnification obligations as to which no claim has been asserted.

"**Closing Date Term Loan Commitment**" means, as to each Term Lender, its obligation to make a Closing Date Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Lender's name on Schedule 2.01 under the caption "Closing Date Term Loan Commitment" or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Section 2.15, 2.16 or 10.01). The initial aggregate amount of the Closing Date Term Loan Commitments is $260,000,000.

"**Closing Date Term Loans**" means the Term Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

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

"**Collateral**" means all the "Collateral" (or equivalent term of each of the foregoing) as defined in any Collateral Document and the Mortgaged Properties, if any.

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

"**Collateral and Guarantee Requirement**" means, at any time, the requirement that:

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(1)(c) or (b) pursuant to Section 6.11 or 6.13 at such time required by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) prior to the consummation of a Qualifying IPO of the Borrower, Holdings (or any successor thereto), (b) each Domestic Subsidiary of the Borrower or a Material Foreign Subsidiary (in each case, other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(1) hereto and (c) any Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) any Credit Agreement Refinancing Indebtedness, Refinancing Loans and/or the ABL Facility (the Persons in the preceding clauses (a) through (c) collectively, the "**Guarantors**");

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest in favor of the Collateral Agent for the benefit of the Secured Parties with the priority set forth in the Applicable Intercreditor Agreement, subject only to Liens permitted by Section 7.01, in

(a) prior to the consummation of a Qualifying IPO of the Borrower, all the Equity Interests of the Borrower,

(b) all Equity Interests of each Domestic Subsidiary, Canadian Subsidiary and other Foreign Subsidiary, in each case, to the extent not constituting a CFC or Foreign Subsidiary Holding Company, that is directly owned by the Borrower or any Subsidiary Guarantor; and

(c) 65% of the Voting Stock of each CFC and Foreign Subsidiary Holding Company and 100% of all other Equity Interests of each CFC and Foreign Subsidiary Holding Company;

(4) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a security interest in favor of the Collateral Agent for the benefit of the Secured Parties in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts, other than Securitization Assets), inventory, equipment, investment property, contract rights, applications and registrations of IP Rights filed in the United States or Canada, other general intangibles, and proceeds of the foregoing, in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by:

(i) delivering certificated securities, intercompany notes and other instruments in which a security interest can be perfected by physical control, in each case to the extent required hereunder or the Security Agreement,

(ii) filing financing statements (or equivalent forms) under the Uniform Commercial Code or the PPSA,

(iii) making any necessary filings with the United States Patent and Trademark Office, United States Copyright Office or Canadian Intellectual Property Office, or

(iv) filings in the applicable real estate records or land registry offices with respect to Mortgaged Properties (or any fixtures related to Mortgaged Properties) to the extent required by the Collateral Documents; and

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the Applicable Intercreditor Agreements; and

(5) the Collateral Agent shall have received counterparts of a Mortgage, together with the other deliverables described in Section 6.11(2)(b), with respect to each Material Real Property listed on Schedule 1.01(2) (to the extent required to be delivered pursuant to Section 6.13) or otherwise required to be delivered pursuant to Section 6.11 (the "**Mortgaged Properties**") duly executed and delivered by the record owner of such property within the time periods set forth in said Sections; *provided* that to the extent any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar recording fees or taxes, the relevant Mortgage shall not secure an amount in excess of the fair market value of the Mortgaged Property subject thereto; *provided*, *further*, that the Loan Parties shall not be required to, and shall not, execute any Collateral Documents that consist of the Mortgages with respect to any Material Real Property located in the United States until (1) such time as Administrative Agent and Lenders have received for any such Material Real Property (where applicable), (i) a completed "life of the loan" Federal Emergency Management Agency standard flood hazard determination,

(ii) if any such Material Real Property is located in a "special flood hazard area" (A) a notification to the Borrower or applicable Loan Party of that fact and, if applicable, notification to the Borrower or the applicable Loan Party that flood insurance coverage is not available and (B) evidence of receipt by the Borrower or the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the Borrower or the applicable Loan Party and flood insurance is available in the community in which such Material Real Property is located, evidence of required flood insurance, (2) the Administrative Agent and the Lenders have confirmed that flood insurance due diligence and flood insurance compliance has been completed by the Lenders, and (3) the Administrative Agent has instructed the Loan Parties to execute and deliver such Mortgages.

The foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, the creation, perfection or maintenance of pledges of, or security interests in, Mortgages on, or the obtaining of Mortgage Policies, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in, or the execution or delivery of any Mortgage and the obtaining of title insurance, surveys or Opinions of Counsel with respect to, particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. None of the Agents shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement or the other Loan Documents in regards to the requirements set forth in this definition.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between the Administrative Agent and the Borrower;

(B) the Collateral and Guarantee Requirement shall not apply to any Excluded Assets;

(C) no deposit account control agreement, securities account control agreement or other control agreements or control arrangements shall be required with respect to any deposit account, securities account or other asset specifically requiring perfection through control agreements except to the extent set forth in Section 6.11(3); *provided*, *however*, that this requirement shall be deemed satisfied for so long as the ABL Facility Administrative Agent is acting as agent for the benefit of the Collateral Agent pursuant to the ABL Intercreditor Agreement with respect to any deposit account control agreement or securities account control agreement to which the ABL Facility Administrative Agent is a party;

(D) no actions in any jurisdiction other than the (i) U.S., (ii) Canada or (iii) the jurisdiction in which any Material Foreign Subsidiary or Material Real Property is located shall be required, nor shall the Administrative Agent or Collateral Agent be authorized to take any action outside of such jurisdictions, to create or perfect any security interests in assets located, registered, applied for, filed, or arising under laws outside of such jurisdiction;

(E) no Intellectual Property filings or searches shall be required in any jurisdiction other than (i) the U.S. or (ii) Canada to create or perfect any security interests in any jurisdiction other than the U.S. or Canada;

(F) no stock certificates of Subsidiaries shall be required to be delivered to the Collateral Agent until the date that is 60 days after the formation or acquisition thereof;

(G) no perfection steps shall be required with respect to (i) letter of credit rights, except to the extent constituting a support obligation for other Collateral as to which perfection is accomplished solely by the filing of a UCC or PPSA financing statement (or equivalent form) (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC or PPSA financing statement (or equivalent form)), (ii) commercial tort claims with a value of less than $2,000,000, (iii) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC or PPSA financing statement (or equivalent form), and (iv) promissory notes evidencing debt for borrowed money in a principal amount of less than $2,000,000 individually; and

(H) any Guarantee granted by a Canadian Subsidiary or any other Material Foreign Subsidiary or Foreign Subsidiary Holding Company shall be automatically terminated (and no more than 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of any Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company shall be Collateral) if such Guarantee and/or pledge of the additional Collateral shall cause (or is reasonably expected to cause) any U.S. shareholder (within the meaning of Section 951(b) of the Code) owning directly or indirectly (within the meaning of Section 958(a) of the Code) any Canadian Subsidiary or Material Foreign Subsidiary to include in income for any year an amount under Section 956 of the Code ("**Section 956 Income**") that is in excess of the deduction actually permitted under Section 245A of the Code with respect to such Section 956 Income by more than $1,000,000 (including if the proposed treasury regulations promulgated under Section 956 tentatively permitting such a deduction are revoked or altered or replaced by other authority, in any case, which limits in any way the ability of any U.S. shareholder of any Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company to claim a deduction under Section 245A of the Code to offset such Section 956 Income in excess of $1,000,000 resulting from the Guarantee by such Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company and/or the inclusion of more than 65% of its voting Equity Interests in the Collateral; *provided* that such limitation on the ability to claim such deduction must arise as a matter of applicable law and not as result of any action or fact that is within the control of Holdings or any of its Subsidiaries) (any Equity Interests of the type described in this clause (H) and excluded from being Collateral being, "**Excluded CFC Equity Interests**" and any Subsidiary of the type described in this clause (H) being, "**Excluded CFC Subsidiary**").

"**Collateral Documents**" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), the Intercompany Subordination Agreement, each of the collateral assignments, security agreements, hypothecs, pledge agreements, Control Agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(d), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Commitment**" means Closing Date Term Loan Commitments, Refinancing Commitments or Extended Commitments, or any commitment in respect of Replacement Loans, as the context may require.

"**Commitment Letter**" means that certain Commitment Letter, dated as of May 6, 2019, among the Borrower, KKR Credit Advisors (US) LLC, KKR Capital Markets LLC, HPS Investment Partners, LLC, TCW Asset Management Company LLC and GoldenTree Asset Management, LP, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Committed Loan Notice**" means a written notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of LIBOR Rate Loans of a given Class, pursuant to Section 2.02(1), which shall be substantially in the form of Exhibit A.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

"**Compensation Period**" has the meaning specified in Section 2.12(3)(b).

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1));

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i) Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year of the Borrower in which the Closing Date occurs and (ii) the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii); and

(3) to the extent that compliance with any Financial Covenant under Section 7.10 is (or was) required in respect of the period covered by such financial statements, certifying as to (and containing all information and calculations necessary for determining) compliance with such Financial Covenant as of the last day of the applicable Test Period.

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt and other long-term liabilities, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) all Indebtedness consisting of Loans (as defined in the ABL Credit Agreement), Swing Line Loans (as defined in the ABL Credit Agreement) and obligations in respect of Letters of Credit (as defined in the ABL Credit Agreement) to the extent otherwise included therein or any other revolving loans, swingline loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized

Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs and (K) the current portion of any liabilities in respect of Hedge Agreements, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and amortization of Capitalized Software Expenditures of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated First Lien Debt**" means as of any date of determination, with respect to the Borrower and its Subsidiaries, (a) Loans under this Agreement, Loans (as defined in the ABL Credit Agreement) (including any Loans incurred by the Borrower in connection with the Incremental ABL Loans which amount shall be deemed to be equal to the Average ABL Amount irrespective of the actual amount outstanding thereunder, Capitalized Lease Obligations and other Consolidated Total Debt secured by Liens on the Collateral (or any portion thereof) that do not rank junior (but without regard to the control of remedies) to Liens securing the Obligations and the Liens securing the ABL Obligations *minus* (b) up to $20,000,000 of cash and Cash Equivalents which are included in the consolidated balance sheet of the Borrower and its Subsidiaries on deposit in accounts in which the Administrative Agent, Collateral Agent or ABL Facility Administrative Agent has established "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable), and which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments, (d) the interest component of Capitalized Lease Obligations and (e) net payments, if any, pursuant to interest rate obligations under any Hedge Agreement with respect to Indebtedness); *plus*

(2) consolidated capitalized interest of such Person and its Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, exceptional, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any multi-year strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of stores or facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of stores or facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and IP Rights development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments); *provided* that amounts added back pursuant to this clause (1), when combined with adjustments pursuant to clause (l) (together with any similar adjustments made in accordance with Section 1.07(3)), and clause (n) of the definition of "Adjusted EBITDA" shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis;

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business or consistent with industry practice) or income (loss) from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of);

(5) solely for the purpose of the Available Amount, the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Subsidiary thereof in respect of such period);

(6) solely for the purpose of determining the Available Amount, the Net Income for such period of any Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar

distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the syndication and incurrence of any Facilities), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Indebtedness evidenced by this Agreement or the ABL Facility) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, in each case only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so excluded to the extent not so reimbursed within such 365 days);

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) the amount of any management, monitoring, consulting, transaction and advisory fees and related expenses paid to the Investors (or any accruals relating to such fees and related expenses) during such period to the extent otherwise permitted by Section 7.06;

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expense or charges incurred by such Person or its Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, in each case only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so excluded to the extent not so reimbursed within such 365 days).

"**Consolidated Secured Debt**" means, as of any date of determination, with respect to the Borrower and its Subsidiaries, the aggregate amount of Consolidated Total Debt that is secured by a Lien on any assets or property of the Borrower or any of its Subsidiaries that constitutes Collateral.

"**Consolidated Total Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition), consisting of Indebtedness for borrowed money, Purchase Money Obligations, Capitalized

Lease Obligations, debt obligations evidenced by notes or similar instruments and Guarantees of Indebtedness listed above *minus* (b) up to $20,000,000 of cash and Cash Equivalents on the consolidated balance sheet of the Borrower and its Subsidiaries and which are on deposit in accounts in which the Administrative Agent, Collateral Agent or ABL Facility Administrative Agent has established "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable), and which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date; *provided* that, (i) for purposes of determining the outstanding amount of Loans (as defined in the ABL Credit Agreement) as of the applicable Test Period, such amount shall be deemed to be equal to the Average ABL Amount for such date irrespective of the actual amount outstanding thereunder and (ii) Consolidated Total Debt will not include Non-Recourse Indebtedness and Indebtedness in respect of any (1) letter of credit, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations, except any unpaid termination payments thereunder.

"**Consolidated Working Capital**" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities. In measuring any increase or decrease in Consolidated Working Capital for any period, (1) to the extent the Borrower or any Subsidiary has consummated during such period any one or more acquisitions or dispositions of any Person, then (a) in the case of an acquisition, the Consolidated Working Capital of such acquired Person as of the date of the consummation of such acquisition (after giving effect to the transactions consummated with respect to such acquisition) will be added to the Consolidated Working Capital of the Borrower and its Subsidiaries as of the first day of such period and (b) in the case of a disposition, the Consolidated Working Capital of the disposed Person as of the date of the disposition of such Person shall be subtracted from the Consolidated Working Capital of the Borrower and its Subsidiaries as of the first day of such period and (2) the application of recapitalization or purchase accounting as a result of any acquisitions or dispositions completed during such period will be excluded.

"**Contract Consideration**" has the meaning specified in clause (2)(j) of the definition of "Excess Cash Flow."

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

"**Control Agreement**" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, which provides for the Collateral Agent to have "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) of deposit Accounts or securities Accounts, as applicable.

"**Controlled Investment Affiliate**" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

"**Credit Agreement Refinanced Debt**" has the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness."

"**Credit Agreement Refinancing Indebtedness**" means secured or unsecured Indebtedness of the Borrower or any Guarantor; *provided* that:

(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or in part, Indebtedness that is either (a) Loans, or (b) other Credit Agreement Refinancing Indebtedness ("**Credit Agreement Refinanced Debt**");

(2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Credit Agreement Refinanced Debt being exchanged, extended, renewed, replaced or refinanced except to the extent permitted under Section 1.02(10) (*plus* (a) the amount of all unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), and other similar amounts payable with respect to the Credit Agreement Refinanced Debt and (b) underwriting discounts, fees, commissions, costs, expenses and other similar amounts payable with respect to such refinancing);

(3) (I) the (a) Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Credit Agreement Refinanced Debt and (b) final maturity date of such Credit Agreement Refinancing Indebtedness is no earlier than the final maturity date of the Credit Agreement Refinanced Debt and (II) All-In Yield with respect to such Credit Agreement Refinancing Indebtedness (or similar interest rate spread applicable to such Credit Agreement Refinancing Indebtedness) shall not be higher than the All-In Yield for such Indebtedness (or similar interest rate spread applicable to such Replaced Loans) immediately prior to the consummation of such Credit Agreement Refinancing Indebtedness;

(4) any mandatory prepayments of:

(a) any Permitted Junior Priority Refinancing Debt or any Credit Agreement Refinancing Indebtedness that comprises unsecured notes or loans may not be made except to the extent that prepayments are (i) otherwise permitted hereunder and (ii) to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the Loans and any such Permitted Equal Priority Refinancing Debt; and

(b) any Permitted Equal Priority Refinancing Debt shall be made on a *pro rata* basis or less than *pro rata* basis (but not greater than a pro rata basis) with the Closing Date Term Loans (other than pursuant to a refinancing otherwise permitted hereunder or with respect to greater than *pro rata* payments to an earlier maturing tranche);

(5) such Indebtedness is not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Guarantor;

(6) if such Indebtedness is secured:

(a) such Indebtedness is not secured by any assets or property of Holdings, the Borrower or any Subsidiary that does not constitute Collateral;

(b) the security agreements relating to such Indebtedness are substantially similar to or the same as the Collateral Documents (as determined in good faith by a Responsible Officer of the Borrower);

(c) if such Indebtedness is secured, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Applicable Intercreditor Agreement; and

(7) the covenants and events of default applicable to such Indebtedness are substantially identical to, or, taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Credit Agreement Refinanced Debt, in each case as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided further* that this clause (7) will not apply to:

(i) terms addressed in the preceding clauses (1) through (6),

(ii) fees and funding discounts,

(iii) redemption, prepayment or other premiums, and

(iv) covenants and other terms applicable only to periods after the Latest Maturity Date of the Closing Date Term Loans at the time of incurrence of such Indebtedness or added for the benefit of the Lenders.

Anything to the contrary notwithstanding (including, for the avoidance of doubt, clause (3) above), Credit Agreement Refinancing Indebtedness will include (1) any Registered Equivalent Notes issued in exchange therefor and (2) any bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (so long as such credit facility includes customary "rollover provisions"), in which case, clause (3) of the first proviso in this definition shall not prohibit the inclusion of customary terms for "bridge" facilities, including customary mandatory prepayment, repurchase or redemption provisions.

For the avoidance of doubt, any voluntary prepayments of Credit Agreement Refinancing Indebtedness may be made on a *pro rata* basis or less than *pro rata* basis, but not greater than pro rata basis, with other Loans.

"**Cure Amount**" has the meaning specified in Section 8.04(1).

"**Cure Deadline**" has the meaning specified in Section 8.04(1).

"**Cure Right**" has the meaning specified in Section 8.04(1).

"**Debt Representative**" means, with respect to any series of Indebtedness secured by Liens permitted under clause (7)(g) and (21) of the definition of "Permitted Liens", Liens securing Indebtedness permitted under clause (25) of Section 7.02(b), Permitted Equal Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, proposals or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Declined Proceeds**" has the meaning specified in Section 2.05(2)(g).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Default Rate**" means an interest rate with respect to any LIBOR Rate Loan or Base Rate Loan, equal to (1) the Base Rate, *plus* (2) the Applicable Rate applicable to Base Rate Loans, respectively, *plus* (3) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)), *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

"**Defaulting Lender**" means, subject to Section 2.17(2), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in writing and in a manner otherwise satisfactory to the Administrative Agent that it will comply with its funding obligations, (d) has, or has a direct or indirect parent company that has, (i) become or is the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, interim receiver, receiver and manager, custodian, conservator, trustee, administrator, assignee for the benefit of creditors, monitor or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (e) has become the subject of a Bail-in Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under this definition shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

"**Deposit Account**" means any checking or other demand deposit account maintained by the Borrower, including any "deposit accounts" under Article 9 of the UCC. All funds in such Deposit Accounts (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Deposit Accounts, subject to this Agreement, the Security Agreement and the ABL Intercreditor Agreement.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or a Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on such Designated Non-Cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Borrower, any Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation of the Available Amount.

"**Designated Revolving Commitments**" means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Subsidiary by any Person other than the Borrower or any Subsidiary that have been designated in an Officer's Certificate delivered to the Administrative Agent as "Designated Revolving Commitments" until such time as the Borrower subsequently delivers an Officer's Certificate to the Administrative Agent to the effect that such commitments will no longer constitute "Designated Revolving Commitments;" *provided* that on the date such Designated Revolving Commitments are established, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the applicable Total Net Leverage Ratio, First Lien Net Leverage Ratio and the availability of any applicable Basket hereunder on such date after giving *pro forma* effect to the incurrence of the entire committed amount of the Indebtedness thereunder (but without netting any cash proceeds thereof), in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with the Total Net Leverage Ratio, First Lien Net Leverage Ratio and the availability of any Baskets hereunder. For the avoidance of doubt, in the case of any Designated Revolving Commitments permitted hereunder, the reference to the "incurrence" of Indebtedness shall refer to the date on which such Designated Revolving Commitments are established.

"**discharge**" means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, any such case in whole or in part.

"**Discount Prepayment Accepting Lender**" has the meaning assigned to such term in Section 2.05(1)(e)(B)(2).

"**Discount Range**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Amount**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Notice**" means a written notice of the Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(C)(1) substantially in the form of Exhibit J.

"**Discount Range Prepayment Offer**" means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent's receipt of a Discount Range Prepayment Notice.

"**Discount Range Prepayment Response Date**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Proration**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(3).

"**Discounted Prepayment Determination Date**" has the meaning assigned to such term in Section 2.05(1)(e)(D)(3).

"**Discounted Prepayment Effective Date**" means in the case of the Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(C) or Section 2.05(1)(e)(D), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

"**Discounted Term Loan Prepayment**" has the meaning assigned to such term in Section 2.05(1)(e)(A).

"**disposition**" has the meaning set forth in the definition of "Asset Sale".

"**Disqualified Institution**" means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower or the Sponsor to (i) the Structuring Advisor and the Administrative Agent from time to time on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by or on behalf of the Borrower or the Sponsor to the Structuring Advisor prior to the Closing Date (a copy of which shall be provided to the Administrative Agent prior to the Closing Date) and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) (excluding, in the case of clause (a), bona fide debt funds) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Borrower or the Sponsor to (i) the Structuring Advisor and the Administrative Agent on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date; it being understood and agreed that the identification of any Person as a Disqualified Institution after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan, subject to Section 10.07(n), until such time such Person no longer constitutes a Lender. The identity of Disqualified Institutions shall be posted or distributed to all Lenders and prospective assignees following request therefor.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control, asset sale, casualty, condemnation, expropriation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation, expropriation or eminent domain), in whole or in part, in each case prior to the date 91 days after Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of, future, current or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability; *provided further* any Capital Stock held by any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Subsidiary has an Investment and is designated in good faith as an

"affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary or in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Domestic Subsidiary**" means any direct or indirect Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

"**ECF Payment**" has the meaning specified in Section 2.05(2)(a).

"**ECF Percentage**" has the meaning specified in Section 2.05(2)(a).

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**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.

"**Eligible Assignee**" means any Person that meets the requirements to be an assignee under Section 10.07(b), *provided* that no Defaulting Lender(s) or Disqualified Institution(s) may be Eligible Assignee(s).

"**Environment**" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

"**Environmental Claim**" means any administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, or proceedings with respect to any Environmental Liability or Environmental Law, (hereinafter "Claims"), including (i) any Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"**Environmental Laws**" means any Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, the protection of human health.

"**Environmental Liability**" means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) resulting from or relating to (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Interests**" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is "insolvent" (within the meaning of Section 4245 of ERISA) or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 412(c) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excess Cash Flow**" means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period (*provided* that for purposes of determining Excess Cash Flow for the Stub ECF Period, decreases in Consolidated Working Capital shall be determined by reference to the entire fiscal year rather than solely with respect to the Stub ECF Period),

(d) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,

(e) cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income, and

(f) cash gains excluded by virtue of clauses (1) through (15) of the definition of "Consolidated Net Income"; *over*

(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of any Permitted Acquisition or other investment permitted hereunder) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of clauses (1) through (15) of the definition of "Consolidated Net Income,"

(b) without duplication of amounts deducted pursuant to clause (j) below in prior fiscal years, the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of IP Rights accrued or made in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, in each case except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Subsidiary or the proceeds from any ABL Cure Amount or any Cure Amount, and without duplication of any amounts deducted from Excess Cash Flow for a prior period,

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, the ABL Facility to the extent there is an equivalent permanent reduction in commitments thereunder (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) and Credit Agreement Refinancing Indebtedness, in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07 and mandatory prepayment of Term Loans pursuant to Section 2.05(2)(b) or 2.05(2)(c), any mandatory prepayment of the ABL Facility pursuant to Section 2.05(2) of the ABL Credit Agreement to the extent there is an equivalent permanent reduction in commitments thereunder, any mandatory discharge of Credit Agreement Refinancing Indebtedness pursuant to the corresponding provisions of the governing documentation thereof to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (x) all other prepayments of Term Loans, (y) all prepayments in respect of any revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (z) payments on any Permitted Indebtedness, except in each case to the extent permitted to be paid pursuant to Section 7.05) made during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, in each case, except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid) or the proceeds from any ABL Cure Amount (unless such Indebtedness has been repaid) or any Cure Amount,

(d) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period (*provided* that for purposes of determining Excess Cash Flow for the Stub ECF Period, increases in Consolidated Working Capital shall be determined by reference to the entire fiscal year rather than solely with respect to the Stub ECF Period),

(e) cash payments by the Borrower and its Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(f) without duplication of amounts deducted pursuant to clauses (h) and (i) below in prior fiscal years, the amount of cash consideration paid by the Borrower and its Subsidiaries (on a consolidated basis) in connection with investments (other than intercompany Investments among Holdings and its Subsidiaries (including the Borrower), Investments in Cash Equivalents or money market instruments in the ordinary course of business) made during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (including Permitted Acquisitions, investments constituting Permitted Investments and investments or made pursuant to Section 7.05), except to the extent such investments were financed with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) of the Borrower or any Subsidiary, or the proceeds from any ABL Cure Amount or any Cure Amount,

(g) the amount of Restricted Payments paid in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (other than Restricted Payments made pursuant to Section 7.05(b)(15)), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) of the Borrower or any Subsidiary, or the proceeds from any ABL Cure Amount or any Cure Amount,

(h) the aggregate amount of expenditures (to the extent not funded with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) or the proceeds from any ABL Cure Amount or any Cure Amount) actually made by the Borrower and its Subsidiaries in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period and are not deducted in calculating Consolidated Net Income,

(i) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings, the Borrower and their respective Subsidiaries during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, that are made in connection with any prepayment or redemption of Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and such payments reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.05(2)(a),

(j) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Subsidiaries (the "**Planned Expenditures**"), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with any of the proceeds received from (A) the issuance or incurrence of Funded Debt (other than the ABL Facility) (except to the extent repaid) or (B) any Cure Amount or ABL Cure Amount); *provided* that to the extent that the aggregate amount of cash actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such subsequent period of four consecutive fiscal quarters,

(k) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period *plus* the amount of distributions with respect to taxes made in such period under Section 7.05(b)(14) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(l) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income,

(m) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument, in each case, to the extent permitted hereunder, (including any amendment or other modification of this Agreement, the other Loan Documents and related documents and any ABL Loan Documents) and including, in each case, any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful, and

(n) at the option of the Borrower, any amounts in respect of investments (including Permitted Acquisitions, Investments constituting Permitted Investments and Investments made pursuant to Section 7.05) and Restricted Payments (including related earnouts and similar payments) which could have been deducted pursuant to clauses (g) or (h) above if made in such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, but which are made after the end of such period and prior to the date upon which a mandatory prepayment for such period would be required under Section 2.05(2)(a) (which amounts shall not affect the calculation of Excess Cash Flow in any future period).

"**Excess Cash Flow Period**" means (i) initially, the period from the Closing Date until February 1, 2020 (this clause (i) being the "**Stub ECF Period**") and (ii) thereafter, each fiscal year of the Borrower, commencing with the fiscal year ending on January 30, 2021.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Accounts**" means any Deposit Account of any Loan Party (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $750,000, or in the aggregate with each other account described in this clause (1), in excess of $2,500,000; (2) the balance of which is swept at the end of each Business Day into a Deposit Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account is swept into another Deposit Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account or otherwise maintains Excluded Funds; (4) any Deposit Account that constitutes a disbursement account of the Borrower or any Loan Party the balance of which consists solely of proceeds of Indebtedness, including the proceeds of the Loans or (5) to the extent that it is cash collateral for letters of credit (other than Letters of Credit as defined under the ABL Credit Agreement) to the extent permitted under the ABL Credit Agreement.

"**Excluded Assets**" means (i) any fee-owned real property that does not constitute Material Real Property and all real property leasehold interests, (ii) pledges and security interests prohibited by any applicable law, rule or regulation (including any legally effective requirement to obtain the consent of any Governmental Authority), (iii) any governmental licenses, permits or state, provincial, territorial or local

franchises, charters or authorizations, to the extent a security interest in any such licenses, permits, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction), (iv) Margin Stock and, to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than Holdings, the Borrower, or any Subsidiary of the Borrower), under the terms of any applicable Organizational Documents, joint venture agreement or shareholders' agreement (*provided* that any such prohibition or enforceable right is in existence as of the Closing Date or at the time of formation or acquisition thereof so long as such prohibition or enforceable right is not created in contemplation of creating an Excluded Asset), equity interests in any person other than directly or indirectly owned Subsidiaries, (v) Excluded Accounts, (vi) any property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangement with an aggregate value of less than $3,500,000 with respect to all such property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangements, to the extent that a pledge thereof or a security interest therein would violate or invalidate such purchase money, Capitalized Lease Obligations or similar arrangement, or create a right of termination in favor of any other party thereto (other than the Borrower or any Guarantor) after giving effect to the applicable anti-assignment clauses of the Uniform Commercial Code, the PPSA or other applicable Laws, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under the Uniform Commercial Code, the PPSA or applicable Laws notwithstanding such prohibition, (vii) personal property to the extent a pledge thereof or a security interest therein would result in a material adverse tax consequence to the Borrower or its Subsidiaries as reasonably determined by the Borrower (in consultation with the Administrative Agent), (viii) personal property for which the Required Lenders and the Borrower have determined in their reasonable judgment and agree in writing that the cost of creating or perfecting such pledges or security interests therein would be excessive in view of the benefits to be obtained by the Lenders therefrom, (ix) any intent-to-use trademark application in Canada or the United States prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto with the Canadian Intellectual Property Office or the United States Patent and Trademark Office (as applicable) (x) Excluded Equity, and (xi) motor vehicles and other goods subject to certificates of title to the extent a Lien thereon cannot be perfected solely by the filing of a UCC or a PPSA financing statement (or equivalent form). For purposes of this definition, "personal property" means goods, investment property, instruments, documents of title, chattel paper, intangibles and money, each as defined in the Uniform Commercial Code.

"**Excluded Contribution**" means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Subsidiaries; and

(3) the sale (other than to a Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower;

in each case designated as Excluded Contributions pursuant to an Officer's Certificate at the time of receipt by the Borrower thereof.

"**Excluded Equity**" means Equity Interests (i) [reserved], (ii) of any Subsidiary acquired pursuant to a Permitted Acquisition if such Equity Interests are pledged and/or mortgaged as security for any assumed Indebtedness permitted under Section 7.02(b)(14) and if and for so long as the terms of such Indebtedness prohibit the creation of any other Lien on such Equity Interests, (iii) [reserved], (iv) of any Subsidiary with

respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment and agreed in writing that the costs of providing a pledge of such Equity Interests or perfection thereof is excessive in view of the benefits to be obtained by the Secured Parties therefrom, (v) Excluded CFC Equity Interests, if applicable, (vi) to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than Holdings, the Borrower or any Subsidiary of the Borrower), under the terms of any applicable Organizational Documents, joint venture agreement or shareholders' agreement, equity interests in any person other than wholly-owned Subsidiaries; and (vii) of any Subsidiary outside the United States the pledge of which is prohibited by applicable Laws or which would reasonably be expected to result in a violation or breach of, or conflict with, fiduciary duties of such Subsidiary's officers, directors or managers.

"**Excluded Funds**" means all amounts (i) solely for the purpose of payroll, employee wages and benefits and payment of taxes and (ii) solely for the purpose of trust related activities.

"**Excluded Proceeds**" means, with respect to any Asset Sale or Casualty Event, the sum of (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that the Required Facility Lenders agree to exclude from the requirement to be applied to prepay the applicable Term Loans pursuant to Section 2.05(2)(b).

"**Excluded Subsidiaries**" means all of the following and "**Excluded Subsidiary**" means any of them:

(1) [reserved],

(2) any Foreign Subsidiary that is not a Material Foreign Subsidiary and following the application of clause (H) being, any Excluded CFC Subsidiary,

(3) [reserved],

(4) [reserved],

(5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law, accounting policies or by Contractual Obligation existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty, or if such Guaranty would require governmental (including regulatory) or third party (other than a Loan Party) consent, approval, license or authorization, unless such consent, approval, license or authorization has been received, or is received after commercially reasonable efforts to obtain the same, which efforts may be requested by the Administrative Agent,

(6) any Securitization Subsidiary,

(7) [reserved],

(8) [reserved],

(9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any material adverse tax consequences) of providing the Guaranty is excessive in relation to the benefits to be obtained by the Lenders therefrom;

(10) any special purpose entity formed for the primary purpose to hold a leasehold interest in real property that is subject to a Sale-Leaseback Transaction and that has no other activities other than those incidental to holding such leasehold interest,

(11) [reserved]; and

(12) any Subsidiary acquired pursuant to a Permitted Acquisition or similar Investment financed at the time of such Permitted Acquisition or similar Investment with secured Indebtedness incurred under Section 7.02(b)(14) and assumed indebtedness (not incurred in contemplation of such Permitted Acquisition or similar Investment) and any Subsidiary thereof that Guarantees such secured Indebtedness, in each case, to the extent, and so long as, such secured Indebtedness prohibits any such Subsidiary from becoming a Guarantor.

"**Excluded Taxes**" means, with respect to each Agent and each Lender,

(1) any tax on such Agent or Lender's net income or profits (or franchise tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction, other than a connection arising from such Agent or Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document),

(2) any branch profits tax or similar tax imposed by any jurisdiction described in clause (1),

(3) [reserved],

(4) any withholding tax attributable to a Lender's failure to comply with Section 3.01(3),

(5) any U.S. federal withholding tax imposed under FATCA, and

(6) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (5) of this definition.

"**Expected Cure Amount**" has the meaning specified in Section 8.04(2).

"**Extended Commitments**" means the Term Loan Commitments held by an Extending Lender.

"**Extended Loans**" means the Term Loans made pursuant to Extended Commitments.

"**Extending Lender**" means each Lender accepting an Extension Offer.

"**Extension**" has the meaning specified in Section 2.16(1).

"**Extension Amendment**" has the meaning specified in Section 2.16(2).

"**Extension Offer**" has the meaning specified in Section 2.16(1).

"**Facilities**" means the Closing Date Term Loans, any Extended Loans, any Refinancing Term Loans or any Replacement Loans, as the context may require, and "**Facility**" means any of them.

"**fair market value**" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

"**FATCA**" means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any regulations promulgated thereunder or official interpretations thereof), and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements (together with any law implementing such agreements).

"**FCPA**" means the U.S. Foreign Corrupt Practices Act of 1977, as amended.

"**Federal Funds Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent from three major banks of recognized standing selected by it on such day on such transactions as determined by the Administrative Agent.

"**Federal Reserve Board**" means the Board of Governors of the Federal Reserve System of the United States of America.

"**Fee Letters**" means, collectively, (i) the Administrative Agent Fee Letter and (ii) that certain OID Letter, dated as of May 6, 2019, by and among the Borrower, KKR Credit Advisors (US) LLC, KKR Capital Markets LLC, HPS Investment Partners, LLC, TCW Asset Management Company LLC and GoldenTree Asset Management, LP, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Financial Covenants**" has the meaning specified in Section 7.10(2).

"**Financial Maintenance Covenant**" has the meaning specified in Section 7.10(1).

"**Financial Officer**" means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

"**First Lien Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Debt outstanding the last day of such Test Period to (b) Adjusted EBITDA of the Borrower and its Subsidiaries for such Test Period, in each case calculated on a *pro forma basis* with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"**Fixed Amounts**" has the meaning specified in Section 1.07(9).

"**Flood Insurance Laws**" means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Flood Insurance Requirements**" has the meaning specified in Section 6.07(2).

"**floor**" means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

"**Foreign Asset Sale**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Casualty Event**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Lender**" means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Plan**" means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States and Canada (other than benefit plans, programs or agreements that are mandated by applicable Laws).

"**Foreign Subsidiary**" means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**Foreign Subsidiary Holding Company**" means any Domestic Subsidiary (a) substantially all of the assets of which consist of the Capital Stock (and, if applicable, Indebtedness) of one or more Foreign Subsidiaries that are CFCs or (b) that is treated as a disregarded entity for U.S. federal income tax purposes, and all assets of which are located outside of the United States and which may include Capital Stock (or, if applicable, Indebtedness) of one or more Foreign Subsidiaries.

"**Fund**" means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**Funded Debt**" means all Indebtedness of the Borrower and its Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**GAAP**" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time.

At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided further* that any calculation or

determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower's election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively.

Notwithstanding the foregoing, if at any time any change occurring after the Closing Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend such ratio, requirement or covenant (including the levels applicable herein to any computation of First Lien Net Leverage Ratio and Total Net Leverage Ratio) to preserve the original intent thereof in light of such change in GAAP (or IFRS) with the desired result that the criteria for evaluating the Borrower's financial condition shall be substantially the same after such change as if such change had not been made; *provided further* that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP or IFRS, or the respective interpretation or application thereof, and that such restatements will not solely as a result of such change in GAAP or IFRS (or such interpretation or application) result in a Default or an Event of Default under the Loan Documents.

Notwithstanding anything to the contrary contained above or in the definition of "Capitalized Lease Obligation," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capitalized Lease Obligations in conformity with GAAP on the date hereof shall be considered Capitalized Lease Obligations, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

"**Governmental Authority**" means the government of the United States, Canada or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, governmental department, commission, board, bureau, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency).

"**Granting Lender**" has the meaning specified in Section 10.07(g).

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantor**" has the meaning specified in clause (2) of the definition of "Collateral and Guarantee Requirement" For avoidance of doubt, the Borrower may, in its sole discretion, cause any domestic Parent Company or Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Subsidiary shall be a Guarantor hereunder for all purposes.

"**Guaranty**" means (a) the Guarantee of the Obligations by the Guarantors substantially in the form of Exhibit E, (b) each other Guarantee and Guarantee supplement delivered pursuant to Section 6.11 and (c) each other Guarantee and Guarantee supplement delivered by any Parent Company or Subsidiary pursuant to the second sentence of the definition of "Guarantor".

"**Hazardous Materials**" means all explosive or radioactive substances or wastes, and all other hazardous or toxic substances or wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, or radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

"**Hedge Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and

conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Hedge Bank**" means any Person party to a Hedge Agreement that is an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of any of the foregoing.

"**Hedging Obligations**" means, with respect to any Loan Party, the obligations of such Person under any Hedge Agreement.

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

"**Hot Topic**" means Hot Topic, Inc., a California corporation.

"**Hot Topic Guarantee**" means the guarantee by Torrid Holding LLC, a Delaware limited liability company ("**Torrid Guarantor**"), of the Secured Notes pursuant to that certain Third Supplemental Indenture (the "**Third Supplemental Indenture**") dated as of January 9, 2018 among Hot Topic, the Guarantors (as defined in the Indenture referred to therein), Torrid Guarantor and The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture referred to therein.

"**HPS**" means HPS Investment Partners, LLC (together with one or more affiliates and/or investment vehicles advised and/or managed by it or one of its affiliates).

"**Identified Participating Lenders**" has the meaning specified in Section 2.05(1)(e)(C)(3).

"**Identified Qualifying Lenders**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**IFRS**" means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immediate Family Members**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Incurrence Based Amounts**" has the meaning specified in Section 1.07(9).

"**Incremental ABL Loans**" means Loans (as defined in the ABL Credit Agreement) incurred pursuant to an increase in the Aggregate Commitments (as defined in the ABL Credit Agreement) under the ABL Facility pursuant to Section 2.15 of the ABL Credit Agreement.

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business;

(d) representing the net obligations under any Hedging Obligations; or

(e) in respect of Disqualified Stock

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

provided that, notwithstanding any of the foregoing sub-clauses of this definition, Indebtedness will be deemed not to include:

(i) Guarantees of obligations not constituting Indebtedness described herein incurred in the ordinary course of business or consistent with industry practice,

(ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) obligations under or in respect of Qualified Securitization Facilities that are non-recourse to the Loan Parties other than any Standard Securitization Undertakings,

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Indemnified Liabilities**" has the meaning specified in Section 10.05.

"**Indemnitees**" has the meaning specified in Section 10.05.

"**Independent Assets or Operations**" means, with respect to any Parent Company, that Parent Company's' total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and its Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

"**Information**" has the meaning specified in Section 10.09.

"**Intellectual Property**" has the meaning specified in the Security Agreement.

"**Intellectual Property Security Agreements**" has the meaning specified in the Security Agreement.

"**Intercompany Subordination Agreement**" means the Intercompany Subordination Agreement, dated as of the Closing Date, substantially in the form of Exhibit Q executed by the Borrower and each Subsidiary that is party thereto.

"**Interest Payment Date**" means, (a) as to any Loan of any Class other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date of the Loans of such Class; *provided* that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan of any Class, the last Business Day of each fiscal quarter (with each such fiscal quarter end being set forth on Schedule 1.01(3)) and the applicable Maturity Date of the Loans of such Class.

"**Interest Period**" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one, two, three or six months thereafter, or to the extent consented to by the Administrative Agent and each applicable Lender, twelve months (or such period of less than one month as may be consented to by the Administrative Agent and each applicable Lender), as selected by the Borrower in its Committed Loan Notice; *provided* that:

(1) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(2) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(3) no Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such LIBOR Rate Loan is a part.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

"**Investment Grade Securities**" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, or repayment or other amount received in cash by the Borrower or a Subsidiary in respect of such Investment.

"**Investors**" means (a) the Sponsor and (b) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"**IP Rights**" has the meaning specified in Section 5.15.

"**IRS**" means Internal Revenue Service of the United States.

"**IT Purchase Agreement**" means that certain IT Asset Purchase Agreement dated as of the date hereof, by and between Hot Topic and the Borrower, as amended or modified from time to time in accordance with the terms hereof and thereof.

"**Judgment Currency**" has the meaning specified in Section 10.26.

"**Junior Lien Debt**" means any Indebtedness for borrowed money of any Loan Party that is secured on a junior basis to the Closing Date Term Loans.

"**Latest Maturity Date**" means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Refinancing Term Loan, Replacement Loan or any Extended Loan, in each case as extended in accordance with this Agreement from time to time.

"**Laws**" or "**laws**" means, collectively, all international, foreign, federal, provincial, territorial, state and local laws (including common law), statutes, treaties, rules, legally enforceable guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the legally binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"**Lease**" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"**Legal Holiday**" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a "Lender." For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender.

"**Lender Indemnitees**" shall have the meaning provided in Section 10.05.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent in writing.

"**LIBOR Borrowing**" means a Borrowing comprised of LIBOR Rate Loans.

"**LIBOR Rate**" means the per annum rate of interest (rounded upwards, if necessary, to the next 1/16th of one percent (1%)) and in no event less than one percent (1%)) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an Interest Period for a term equivalent to such period, equal to the London Interbank Offered Rate, or such other rate per annum as is widely recognized as the successor rate thereto if the ICE Benchmark Administration is no longer making a London Interbank Offered Rate, as published on such day and time on the applicable Bloomberg screen page (or such other commercially available source providing quotations of the "Libor Rate" as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or if such rate is not available for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted with a term equivalent to such Interest Period would be offered by three major banks in the London interbank market at their request at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"**LIBOR Rate Loan**" means a Revolving Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, assignment, deposit arrangement, charge, preference, priority, security interest or encumbrance or preferential arrangement of any kind in respect of such asset, and any other arrangement having the effect of providing security, whether or not filed, recorded or otherwise perfected under applicable law, including, any conditional sale agreement, capital lease, title retention agreement or consignment agreement, any option or other agreement to sell or give a security interest, any netting arrangement, defeasance agreement or reciprocal fee arrangement, and any authorized filing of or agreement to give any financing statement (or equivalent form) under the UCC or the PPSA (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

"**Loan**" means an extension of credit under Article II or the making of Replacement Loans pursuant to Section 10.01 by a Lender to the Borrower in the form of a Term Loan.

"**Loan Documents**" means, collectively, (a) this Agreement, (b) the Term Notes, (c) any amendments thereto, including any Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans, (d) the Guaranty, (e) the Collateral Documents, (f) the Applicable Intercreditor Agreements and (g) the Fee Letters (other than for purposes of Section 10.01).

"**Loan Parties**" means, collectively, Holdings, the Borrower and each Subsidiary Guarantor.

"**Management Services Agreement**" means the management services agreement or similar agreements among the Sponsor or certain of its respective management companies associated with it or their advisors, if applicable, and the Borrower (or any Parent Company).

"**Management Stockholders**" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date or will become holders of such Equity Interests in connection with the Transactions.

"**Margin Stock**" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Material Adverse Effect**" means, a circumstance or condition that would materially and adversely affect (a) the business, operations or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents to which it is a party or (c) the rights and remedies of the Lenders, the Collateral Agent and the Administrative Agent under the Loan Documents.

"**Material Foreign Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Foreign Subsidiaries (other than Canadian Subsidiaries) (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Subsidiaries of such Foreign Subsidiary at the last day of the most recent Test Period) were equal to or greater than 7.5% of Total Assets of such Foreign Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the revenues of the Subsidiaries of such Foreign Subsidiary for such Test Period) were equal to or greater than 7.5% of the consolidated gross revenues of such Foreign Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Foreign Subsidiaries (other than Canadian Subsidiaries) that are not Material Foreign Subsidiaries comprise in the aggregate more than (when taken together with the Total Assets of the Subsidiaries of such Foreign Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Test Period or more than (when taken together with the gross revenues of the Subsidiaries of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Test Period) 7.5% of the consolidated gross revenues of such Foreign Subsidiaries for such Test Period, then the Borrower shall, not later than thirty (30) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true. Notwithstanding the forgoing, any Foreign Subsidiary (other than a Canadian Subsidiary) that holds Intellectual Property that is material to the business, taken as a whole, of any of Holdings, the Borrower or any Subsidiary (as determined by the Borrower in good faith) shall be deemed to be a Material Foreign Subsidiary for purposes of this Agreement.

"**Material Real Property**" means (a) any fee-owned real property located in the United States or Canada and owned by any Loan Party, having a fair market value in excess of $1,000,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof and (b) any fee-owned real property located outside of the United States or Canada and owned by any Loan Party, having a fair market value in excess of $4,000,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof; *provided* that for the avoidance of doubt, Material Real Property will not include any Excluded Assets.

"**Material Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Domestic and Canadian Subsidiaries (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and its Domestic and Canadian Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and its Domestic and Canadian Subsidiaries for such Test Period, in each case determined in accordance with

GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Subsidiaries that are not Material Subsidiaries solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 5.0% of Total Assets of the Borrower and its Domestic and Canadian Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Test Period or more than (when taken together with the gross revenues of the Subsidiaries of such Subsidiaries for such Test Period) 5.0% of the consolidated gross revenues of the Borrower and its Domestic and Canadian Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Test Period, then the Borrower shall, not later than thirty (30) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Subsidiaries as "Material Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries. At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made based on the Pro Forma Financial Statements.

"**Maturity Date**" means (i) with respect to the Closing Date Term Loans, in each case that have not been extended pursuant to Section 2.16, the date that is five and one-half (5.5) years after the Closing Date, (ii) with respect to any tranche of Extended Loans, the final maturity date as specified in the applicable Extension Amendment, (iii) with respect to any Refinancing Term Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to Replacement Loans, the final maturity date as specified in the applicable amendment; *provided* that in each case, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Mortgage Policies**" has the meaning specified in Section 6.11(2)(b)(ii).

"**Mortgaged Properties**" has the meaning specified in paragraph (5) of the definition of "Collateral and Guarantee Requirement."

"**Mortgages**" means collectively, the deeds of trust, trust deeds, debentures, charges, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(1) and any other deeds of trust, trust deeds, debentures, charges, deeds to secure debt or mortgages executed and delivered pursuant to Sections 6.11.

"**Multiemployer Plan**" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Necessary Cure Amount**" has the meaning specified in Section 8.04(2).

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate Cash Equivalent proceeds or other cash amounts received directly or indirectly by or on behalf of the Borrower or any Subsidiary in respect of such Asset Sale or Casualty Event, including any Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Subsidiaries as a result of any such Asset Sale or Casualty Event by a Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable by the Borrower or a Subsidiary as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 2.05(2)(b)) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that (a) subject to clause (b) below, no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed $1,000,000 and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $2,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1)); and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary or any Permitted Equity Issuance by the Borrower or any Parent Company, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

"**Non-Consenting Lender**" has the meaning specified in Section 3.07.

"**Non-Defaulting Lender**" means, at any time, a Lender that is not a Defaulting Lender.

"**Non-Extended Lender**" has the meaning specified in Section 2.16.

"**Non-Excluded Taxes**" means all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"**Non-Loan Party**" means any Subsidiary of the Borrower that is not a Loan Party.

"**Non-Recourse Indebtedness**" means Indebtedness that is non-recourse to the Borrower and its Subsidiaries.

"**Notice of Intent to Cure**" has the meaning specified in Section 6.02(1).

"Not Otherwise Applied" means, with reference to any proceeds from any Equity Issuance or the amount of any contributions to the equity capital of the Borrower and its Subsidiaries, (1) that such amount was not previously applied pursuant to (or otherwise included in the calculation of), as applicable, clause (3), (4) or (5) of the Available Amount, Section 7.02(b)(12)(a), Section 7.05(b)(3), 7.05(b)(4), 7.05(b)(14)(h)(ii) and (2) that such Equity Issuance is not Designated Preferred Stock, an Excluded Contribution or Refunding Capital Stock.

"**Obligations**" means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, including the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, premium (including the Prepayment Premium), Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding,

(2) [reserved],

(3) [reserved], and

(4) the Guaranty in respect of each of the foregoing.

"**OFAC**" shall mean the U.S. Department of the Treasury, Office of Foreign Assets Control.

"**Offered Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Offered Discount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Officer's Certificate**" means a certificate signed on behalf of a Person by a Responsible Officer of such Person.

"**OID**" means original issue discount.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower.

"**Organizational Documents**" means

(1) with respect to any corporation or ULC, the certificate or articles of incorporation, amalgamation or continuance or memorandum of association (or other equivalent), as applicable, and the bylaws (or equivalent) or comparable constitutive documents with respect to any non-U.S. or non-Canadian jurisdiction;

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Applicable ECF**" means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"**Other Applicable Indebtedness**" means Credit Agreement Refinancing Indebtedness secured on a *pari passu* basis with the Closing Date Term Loans, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a *pari passu* basis with the Closing Date Term Loans.

"**Other Applicable Net Proceeds**" means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"**Other Taxes**" means any and all present or future stamp, court or documentary Taxes, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"**Outstanding Amount**" means on any date, the outstanding principal amount of any Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans, occurring on such date.

"**Overnight Rate**" means, for any day, with respect to any amount, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Parent Company**" means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Capital Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), will have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of 50.0% or more of the total voting power of the Voting Stock of such Person.

"**Participant**" has the meaning specified in Section 10.07(d).

"**Participant Register**" has the meaning specified in Section 10.07(e).

"**Participating Lender**" has the meaning specified in Section 2.05(1)(e)(C)(2).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the preceding five plan years.

"**Perfection Certificate**" has the meaning specified in the Security Agreement.

"**Permitted Acquisition**" has the meaning specified in clause (3) of the definition of "Permitted Investments."

"**Permitted Asset Swap**" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Subsidiary and another Person; *provided* that (i) any cash or Cash Equivalents received must be applied in accordance with Section 2.05(2)(b)(i) and (ii) the aggregate value (as determined by the Borrower in good faith) of all such Permitted Asset Swaps shall not exceed $10,000,000 in any fiscal year.

"**Permitted Disposition**" means any Asset Sale permitted pursuant to Section 7.04.

"**Permitted Equal Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a *pari passu* basis with the Closing Date Term Loans.

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

"**Permitted Holder**" means (1) the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of such group and without giving effect to the existence of such group or any other group, such Investor and Management Stockholders, collectively, have beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent, and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Permitted Parent.

"**Permitted Indebtedness**" means Indebtedness permitted to be incurred in accordance with Section 7.02.

"**Permitted Investments**" means:

(1) any Investment (a) in any Loan Party, (b) by any Subsidiary that is a Non-Loan Party in any other Subsidiary that is a Non-Loan Party and (c) by any Loan Party in any Subsidiary that is a Non-Loan Party; *provided* that the aggregate amount of Investments (other than as a result of the transfer of Equity Interests or Indebtedness of any Subsidiary that is a Non-Loan Party to any other Subsidiary that is a Non-Loan Party) outstanding at any time pursuant to this clause (c) shall not exceed $10,000,000;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Subsidiary in any Person (directly or through entities that will be Subsidiaries), if as a result of such Investment (i) such Person becomes a Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Subsidiary, together with any other Investments necessary to consummate the foregoing (a "**Permitted Acquisition**"); *provided* that:

(A) Investments made by Loan Parties in Persons that do not become Loan Parties or in assets that are not owned by a Loan Party pursuant to a Permitted Acquisition permitted by this clause (3) shall be permitted without limitation; *provided* that following such Permitted Acquisition, the aggregate amount of Investments in Subsidiaries that do not become Loan Parties outstanding at any time pursuant to this clause (A) shall not exceed $10,000,000 (*provided* that the limitation set forth in this proviso shall not apply to the Permitted Acquisitions of lines of business or going concerns where a majority of the assets, revenue or Adjusted EBITDA of which are located in Persons that become Guarantors);

(B) (i) subject to Section 1.07(8), immediately before and after giving *pro forma* effect to any such Investment, no Event of Default under Sections 8.01(1) or 8.01(6) will have occurred and be continuing,

(ii) to the extent required by the Collateral and Guarantee Requirement, after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.11, and

(iii) after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.17;

(b) any Investment held by such Person that is acquired pursuant to such Permitted Acquisition; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as set forth on Schedule 7.03 or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; *provided* that the amount of any such Investment or binding commitment may be increased, extended, modified, replaced, reinvested or renewed, (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;

(6) any Investment acquired by the Borrower or any Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at the time outstanding, not to exceed $1,000,000 (with the amount of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided* that if any Investment pursuant to this clause (8) is made in any Person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above (to the extent permitted thereunder) and will cease to have been made pursuant to this clause (8) for so long as such Person continues to be a Subsidiary;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; *provided* that such Equity Interests will not increase the Available Amount and are Not Otherwise Applied;

(10) (a) guarantees of Indebtedness permitted under Section 7.02 and performance guarantees incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of liens on the assets of the Borrower or any Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.06(b)(3), (4), (7), (8), (10), (12), (14), (16), (17), (18), (19), (20), (23), (24) and (25);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or similar assets or the non-exclusive licensing of IP Rights pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed $10,000,000, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *plus* at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower or any Subsidiary in reliance on Section 7.05(b)(20) (such increase shall result in a reduction in availability under Section 7.05(b)(20)); *provided* that if any Investment pursuant to this clause (13) is made in any Person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above (to the extent permitted thereunder) and will cease to have been made pursuant to this clause (13) for so long as such Person continues to be a Subsidiary;

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation pursuant to any Standard Securitization Undertakings (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or any Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of $2,000,000 outstanding at any one time;

(16) loans and advances to employees, directors, officers, members of management and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contacts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Subsidiary to the extent otherwise permitted hereunder;

(23) [reserved];

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) [reserved];

(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) [reserved];

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens"; and

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause.

For purposes of determining compliance with this definition, an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

"**Permitted Junior Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a junior lien basis to the Closing Date Term Loans.

"**Permitted Liens**" means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers' compensation laws, unemployment insurance, health, disability or employee benefits, other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) securing reimbursement or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations and in respect of costs of litigation) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. or Canadian government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics', laborers', suppliers' or other similar or statutory Liens (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided for, in each ease, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title, inchoate Liens for non-delinquent real property taxes and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person and exceptions on title policies insuring liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (4), (13), (25) or (29) of Section 7.02(b); *provided* that:

(a) Liens securing obligations relating to any Indebtedness permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), *plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness or Preferred Stock incurred under such clause (4) or (13) of Section 7.02(b);

(b) Liens securing obligations relating to Indebtedness permitted to be incurred pursuant to such clause (29) extending only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) [reserved];

(e) [reserved];

(f) [reserved]; and

(g) in the case of Liens securing Indebtedness incurred under clause (25) of Section 7.02(b), together with any Refinancing Indebtedness in respect thereof, such Liens are on assets constituting Collateral and the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement, which shall provide that (i) the Liens on the ABL Priority Collateral securing such Indebtedness may be pari passu or senior to the Liens on the ABL Priority Collateral securing the Closing Date Term Loans and (ii) the Liens on the Term Priority Collateral securing such Indebtedness shall be junior to the Liens on the Term Priority Collateral securing the Closing Date Term Loans.

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (including Liens in effect on the Closing Date securing Indebtedness permitted under Section 7.02(b)(3) but excluding Liens securing Indebtedness permitted under Section 7.02(b)(25)), in each case as set forth on Schedule 7.01;

(9) [reserved];

(10) Liens on property or other assets at the time the Borrower or a Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Subsidiary and including Liens securing Indebtedness incurred pursuant to clause 14(a) of Section 7.02(b); *provided* that such Liens are not

created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation; *provided further* that such Liens are limited to all or part of the same property or assets (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after acquired-property) that secured the obligations to which such Liens relate;

(11) [reserved];

(12) Liens securing (x) Hedging Obligations under Secured Hedge Agreements and (y) obligations in respect of Cash Management Services under Secured Cash Management Agreements;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower's or any Subsidiary's products, technologies or services) that do not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole, and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(15) Liens arising from UCC or PPSA (or equivalent statutes) financing statements or similar public filings regarding operating leases, consignments or accounts entered into by the Borrower and its Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary UCC or PPSA (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Subsidiary; *provided* that such liens securing Indebtedness for borrowed money incurred by a Guarantor and owing to a Subsidiary that is not a Guarantor is expressly subordinated to the Liens securing the Secured Obligations of the Loans of such Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens on Securitization Assets incurred in connection with a Qualified Securitization Facility;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness or Preferred Stock secured by any Lien referred to in clauses (8) or (10) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) that secured the original Lien (*plus* improvements and accessions on such property) and proceeds and products thereof and (b) the Indebtedness or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (7), (8) or (10) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees, defeasance costs, underwriting discounts or similar fees) and premiums (including tender premiums and accrued and unpaid interest), related to such refinancing, refunding, extension, renewal or replacement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens securing obligations in an aggregate principal amount at any one time outstanding not to exceed $15,000,000; *provided*, that if such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Sections 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04 in each case, solely to the extent such Investment or sale, disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(31) ground leases, leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) [reserved];

(33) [reserved];

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof;

(39) [reserved];

(40) agreements to subordinate any interest of the Borrower or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) Liens constituting reservations, limitations, provisos and conditions expressed in any original grants from a Governmental Authority or other grants of real property, or interests therein which do not interfere in any material respect with the use of such real property or the ordinary conduct of the business of the Loan Parties or materially impair the value of the real property which may be subject thereto;

(44) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(45) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with in all material respects;

(46) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(47) zoning by-laws and other land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(48) Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Equal Priority Refinancing Debt or (ii) Permitted Junior Priority Refinancing Debt, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof; *provided*, in each case, such Liens are subject to the Applicable Intercreditor Agreement; and

(49) Lien securing obligations relating to any Indebtedness permitted to be incurred pursuant to clause (29) of Section 7.02(b); *provided*, that such Indebtedness is not secured by assets constituting Collateral.

For purposes of determining compliance with this definition, a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest on such Indebtedness.

"**Permitted Parent**" means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

"**Person**" means any individual, corporation, company, ULC, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Plan**" means any material "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"**Planned Expenditures**" has the meaning specified in the definition of Excess Cash Flow.

"**Platform**" has the meaning specified in Section 6.02.

"**Pledged Collateral**" has the meaning specified in the Security Agreement.

"**PPSA**" means the Personal Property Security Act (Ontario), including the regulations thereunder, provided that if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, "PPSA" shall mean the Personal Property Security Act or such other applicable legislation (including the *Civil Code of Quebec* (including the regulations thereunder)) in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

"**Prepayment Premium**" means, with respect to a repayment or prepayment (including following acceleration) of all or any portion of the Closing Date Term Loans occurring (i) prior to the first anniversary of the Closing Date, an amount equal to three percent (3.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, (ii) on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, an amount equal to two percent (2.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, (iii) on and after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, an amount equal to one percent (1.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, or (iv) on or after the third anniversary of the Closing Date, zero percent (0.00%).

"**Private-Side Information**" means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

"**Pro Forma Financial Statements**" has the meaning specified in Section 5.05(1)(b).

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Term Loan of a given Class of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Exposure of such Class of such Lender at such time and the denominator of which is the aggregate Term Loan Exposure of such Class of all Lenders at such time; *provided*, that, if the Term Loan of a given Class has been paid in full prior to such determination, then solely for purposes of Section 9.08, the Pro Rata Share shall be determined as of the last date that any such Term Loan of a given Class was outstanding.

"**Public Company Costs**" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower's or its Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"**Public Lender**" means Lenders that do not wish to receive Private-Side Information.

"**Public-Side Information**" means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of applicable securities Laws), and (ii) at any time on or after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of applicable securities Laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

"**Purchase Money Obligations**" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement or property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Stock.

"**Qualified Proceeds**" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"**Qualified Securitization Facility**" means any Securitization Facility with a principal amount of financing extended not to exceed in the aggregate, together with all other Qualified Securitization Facilities, $5,000,000, that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Subsidiary or Securitization Subsidiary and on customary terms for similar transactions (b) all sales or contributions of Securitization Assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower).

"**Qualifying IPO**" means any transaction or series of transactions that results in any common equity interests of the IPO Entity being publicly traded on any United States national securities exchange or over the counter market, or any analogous exchange or market in Canada, Ireland, the United Kingdom or any country of the European Union.

"**Qualifying Lender**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Rating Agencies**" means Moody's and S&P, or if Moody's or S&P (or both) are not making ratings on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody's or S&P (or both), as the case may be.

"**Refinance**" has the meaning assigned in the definition of "Refinancing Indebtedness" and "**Refinancing**" and "**Refinanced**" have meanings correlative to the foregoing.

"**Refinanced Debt**" has the meaning assigned to such term in the definition of "Refinancing Indebtedness."

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Refinancing Loans or Refinancing Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.

"**Refinancing Commitments**" means any Refinancing Term Commitments.

"**Refinancing Indebtedness**" means (x) Indebtedness incurred by the Borrower or any Subsidiary or (y) Preferred Stock issued by any Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("**Refinance**") any Indebtedness or Preferred Stock, including any Refinancing Indebtedness, so long as:

(1) (a) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock, as applicable, being refinanced except to the extent permitted under Section 1.02(10), *plus* (b) any accrued and unpaid interest on, the Indebtedness, the amount of any accrued and unpaid dividends on, the Preferred Stock or the liquidation preference of the Disqualified Stock, *plus* any accrued and unpaid dividends on, the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "**Refinanced Debt**"), *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the "**Incremental Amounts**");

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt;

(3) to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness, such Refinancing Indebtedness is subordinated in right of payment to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to the Applicable Intercreditor Agreement or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Subsidiary that does not secure the Refinanced Debt being Refinanced (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property); *provided* that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) [reserved];

provided further that (x) clause (2) of this definition will not apply to any Refinancing Indebtedness other than Indebtedness, Disqualified Stock and Preferred Stock incurred under clauses (2), (14), (25), (30) and (31) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof) and (y) Refinancing Indebtedness may be incurred in the form of a customary "bridge" or other interim credit facility intended to be refinanced or replaced with long-term indebtedness which does not satisfy the requirements of clause (2) above so long as, subject to customary conditions, as determined in good faith by the Borrower, such "bridge" or other interim indebtedness will either be automatically converted into or required to be exchanged for permanent financing which satisfies the requirements of clause (2) of this definition.

"**Refinancing Loans**" means any Refinancing Term Loans.

"**Refinancing Term Commitments**" means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.

"**Refunding Capital Stock**" has the meaning specified in Section 7.05(b)(2).

"**Register**" has the meaning specified in Section 10.07(c).

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Rejection Notice**" has the meaning specified in Section 2.05(2)(g).

"**Related Business Assets**" means assets (other than Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Subsidiary in exchange for assets transferred by the Borrower or a Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Subsidiary.

"**Related Indemnified Person**" of an Indemnitee means (1) the respective directors, officers or employees of such Indemnitee and (2) the respective agents of such Indemnitee, in the case of this clause (2), acting at the instructions of such Indemnitee.

"**Related Person**" means, with respect to any Person, (a) any Affiliate of such Person and (b) the respective directors, officers, employees, agents, partners, members, advisors and other representatives of such Person or any of its Affiliates and the successors of each of the foregoing.

"**Release**" means any release, spill, emission, discharge, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment.

"**Replaced Loans**" has the meaning specified in Section 10.01.

"**Replacement Loans**" has the meaning specified in Section 10.01.

"**Reportable Event**" means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

"**Required Facility Lenders**" means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of the (a) aggregate principal amount of outstanding Loans under such Facility or Facilities and (b) aggregate unused Commitments under such Facility or Facilities; *provided* that the portion of outstanding Loans and the unused Commitments of any such Facility, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

"**Required Lenders**" means, as of any date of determination, Lenders having more than 50% of the aggregate Term Loan Exposure; *provided* that the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of the "Required Lenders".

"**Responsible Officer**" means, with respect to a Person, the chief executive officer, chief operating officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"**Restricted Investment**" means any Investment other than any Permitted Investment(s).

"**Restricted Junior Debt**" has the meaning specified in Section 7.05(a).

"**Restricted Junior Debt Payment**" has the meaning specified in Section 7.05(a).

"**Restricted Payment**" has the meaning specified in Section 7.05.

"**Retained Excess Cash Flow Amount**" means, at any date of determination, an amount, no less than zero and determined on a cumulative basis, that is equal to the aggregate cumulative sum of Excess Cash Flow that is not required to be applied to make an ECF Payment under Section 2.05(2) for each Excess Cash Flow Period ending after the Closing Date.

"**Reverse TSA**" means the Reverse TSA as defined in the IT Purchase Agreement.

"**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale-Leaseback Transaction**" means any arrangement providing for the leasing by the Borrower or any Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Subsidiary to a Person other than the Borrower or any Subsidiary in contemplation of such leasing.

"**Same Day Funds**" means disbursements and payments in immediately available funds.

"**Sanctioned Person**" means at any time: (a) any Person listed on any Sanctions-related list of designated or blocked persons; (b) any Person resident in, located in, or an entity organized under the laws of, a country or territory that is the subject of comprehensive Sanctions (including, as of the date of this Agreement, Cuba, Iran, North Korea, Syria, and the Crimea region); or (c) any Person majority-owned or controlled by any of the foregoing.

"**Sanctions**" means applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by: (a) the U.S. government, including those administered by OFAC and the United States Department of Commerce; (b) any Canadian Governmental Authority (including those imposed under the *United Nations Act* (Canada), the *Special Economic Measures Act* (Canada), and the *Export and Import Permits Act* (Canada), in each case including the regulations thereunder); (c) the European Union and implemented by its member States; (d) the United Nations Security Council; or (e) Her Majesty's Treasury of the United Kingdom.

"**SEC**" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Cash Management Agreement**" means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Subsidiary and a Cash Management Bank; and designated in writing by the Cash Management Bank and the Borrower to the Administrative Agent as a "Secured Cash Management Agreement."

"**Secured Hedge Agreement**" means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Subsidiary and any Hedge Bank, (b) designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a "Secured Hedge Agreement" and (c) entered into solely for the purpose of hedging either (i) the interest rate payable pursuant to this Agreement or any other Facility or (ii) currency rates between the Dollar and Canadian Dollar.

"**Secured Notes**" means the 9.250% Senior Secured Notes due 2021 of Hot Topic.

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent and/or Collateral Agent from time to time pursuant to Section 9.01(2) or 9.07.

"**Securities Account**" means any securities account maintained by the Borrower or any Subsidiary Guarantors, including any "security accounts" under Article 9 of the UCC. All funds in such Securities Accounts (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Securities Accounts, subject to this Agreement, the Security Agreement and the ABL Intercreditor Agreement.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securitization Assets**" means (a) accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such assets customarily transferred together with such assets in a securitization or receivables financing.

"**Securitization Facility**" means any transaction or series of securitization financings that may be entered into by the Borrower or any Subsidiary pursuant to which the Borrower or any such Subsidiary may sell, contribute, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

"**Securitization Fees**" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility. "**Securitization Subsidiary**" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"**Security Agreement**" means, collectively, the Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

"**Shared Services Agreement**" means that certain Amended and Restated Services Agreement, dated March 21, 2019, between Hot Topic and the Borrower, as amended or modified from time to time in accordance with the terms hereof and thereof.

"**Significant Subsidiary**" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

"**Similar Business**" means (1) any business conducted or proposed to be conducted by the Borrower or any Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Subsidiaries conduct or propose to conduct on the Closing Date.

"**Solicited Discount Proration**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Solicited Discounted Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solicited Discounted Prepayment Notice**" means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(D) substantially in the form of Exhibit L.

"**Solicited Discounted Prepayment Offer**" means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Auction Agent's receipt of a Solicited Discounted Prepayment Notice.

"**Solicited Discounted Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date:

(1) the sum of the liabilities of such Person (including contingent liabilities), on a consolidated basis, does not exceed the present fair saleable value of the present assets of such Person, on a consolidated basis,

(2) the fair value of the property of such Person, on a consolidated basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person, on a consolidated basis,

(3) the capital of such Person, on a consolidated basis, is not unreasonably small in relation to its business as contemplated on such date; and

(4) such Person has not incurred and does not intend to incur, or believe that it will incur, debts including current obligations beyond their ability to pay such debts as they become due (whether at maturity or otherwise).

The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances as of such date, would reasonably be expected to become an actual and matured liability.

"**SPC**" has the meaning specified in Section 10.07(g).

"**Specified Discount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Notice**" means a written notice of the Borrower's Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

"**Specified Discount Prepayment Response**" means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

"**Specified Discount Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Proration**" has the meaning specified in Section 2.05(1)(e)(B)(3).

"**Specified Transaction**" means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an equity offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Subsidiary as discontinued operations (as defined under GAAP),

(3) any Investment that results in a Person becoming a Subsidiary,

(4) [reserved],

(5) any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,

(6) any Asset Sale (a) that results in a Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Subsidiary during the Test Period,

(8) compliance with the Financial Covenants, or

(9) any other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"**Sponsor**" means Sycamore Partners Management, L.P. and any of its respective Affiliates and funds or partnerships managed or advised by it or any of its respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"**Standard Securitization Undertakings**" means representations, warranties, covenants, guaranties and indemnities (including repurchase obligations in the event of a breach of representation and warranty or as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to, the seller) made or provided, and servicing obligations undertaken, by the Borrower or any Subsidiary thereof in connection with a Qualified Securitization Facility.

"**Structuring Advisor**" means KKR Credit Advisors (US) LLC, in its capacity as structuring advisor under this Agreement.

"**Submitted Amount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Submitted Discount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Subordinated Indebtedness**" means any Indebtedness for borrowed money of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, ULC, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise and

(b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"**Subsidiary Guarantor**" means any Guarantor other than Holdings and any other Parent Company.

"**Successor Borrower**" has the meaning specified in Section 7.03(4).

"**Successor Holdings**" has the meaning specified in Section 7.03(5).

"**Supermajority Lenders**" means, as of any date of determination, Lenders having more than 66.67% of the aggregate Term Loan Exposure; *provided* that the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of the "Supermajority Lenders".

"**Supplemental Administrative Agent**" and "**Supplemental Administrative Agents**" have the meanings specified in Section 9.15(1).

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

"**Tax Group**" as defined in Section 7.05(b)(14)(a).

"**Tax Indemnitee**" as defined in Section 3.01(5).

"**Term Borrowing**" means a Borrowing of any Term Loans.

"**Term Commitment**" means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) a Refinancing Amendment, (iii) an Extension Amendment or (iv) an amendment in respect of Replacement Loans. The initial amount of each Term Lender's Term Commitment is its Closing Date Term Commitment or, otherwise, in the Assignment and Assumption, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans pursuant to which such Lender shall have assumed its Commitment, as the case may be.

"**Term Facility**" means any Facility consisting of Term Loans or Term Commitments.

"**Term Intercreditor Agreement**" means a Term Intercreditor Agreement substantially in the form of Exhibit G-2 among the Collateral Agent and one or more Debt Representatives and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**Term Lender**" means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

"**Term Loan**" means any Closing Date Term Loan, Refinancing Term Loan, Extended Loan or Replacement Loan, as the context may require.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Commitment.

"**Term Note**" means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

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

"**Termination Conditions**" means, (x) the payment in full in cash of the Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and (y) the termination of the Commitments.

"**Test Period**" in effect at any time means the Borrower's most recently ended four consecutive fiscal quarters (taken as one accounting period) for which, subject to Section 1.07(1), financial statements have been delivered pursuant to Section 6.01(1) or (2), as applicable; *provided* that prior to the first date on which financial statements have been furnished, the Test Period in effect will be the period of four consecutive fiscal quarters of the Borrower ended February 2, 2019.

"**Threshold Amount**" means $10,000,000.

"**Total Assets**" means, at any time, the total assets of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower).

"**Total Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Test Period to (b) Adjusted EBITDA of the Borrower for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

"**Traded Securities**" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"**Transaction Expenses**" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

"**Transactions**" means, collectively, (a) the funding of the Closing Date Term Loans, (b) the execution and delivery of the Loan Documents, (c) the consummation of the Closing Date Refinancing, (d) the execution and delivery of the 2019 ABL Amendment and, if applicable, the concurrent borrowing under the ABL Facility, (e) the consummation of any other transactions in connection with the foregoing and (f) the payment of Transaction Expenses.

"**Treasury Capital Stock**" has the meaning assigned to such term in Section 7.05(b)(2)(a).

"**Trust Account**" means any accounts or trusts used solely to hold Trust Funds.

"**Trust Funds**" means cash, Cash Equivalents or other assets comprised of: (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party's employees; (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer's share thereof)); and (3) any other funds which Holdings, the Borrower or any of their Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Subsidiary of the Borrower.

"**Type**" means, with respect to a Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"**ULC**" means an unlimited company, unlimited liability corporation or unlimited liability company governed by the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta) or the *Business Corporations Act* (British Columbia) or any other present or future Laws governing ULCs in Canada.

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"**United States**" and "**U.S**." mean the United States of America.

"**United States Tax Compliance Certificate**" has the meaning specified in Section 3.01(3)(b)(iii).

"**U.S. Lender**" means any Lender that is not a Foreign Lender.

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**VCOC Rights Letter**" means that certain letter agreement between the Borrower and HPS dated as of the date hereof in the form previously agreed between HPS and the Borrower.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied by* the amount of such payment, *by*

(2) the sum of all such payments; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "**Applicable Indebtedness**"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"**wholly owned**" means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors' qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

"**Withdrawal Liability**" means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such term is defined in Part I of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term “including” is by way of example and not limitation.

(5) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(6) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”.

(7) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(8) The word “or” is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words “exists”, “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived. If, prior to the taking of any action under Section 8.02 (or the occurrence of any event set forth in the proviso thereto), any Default or Event of Default occurs due to (i) the failure by any Loan Party to take any action by a specified time, such Default or Event of Default shall be deemed to have been cured at the time, if any, that the applicable Loan Party takes such action or (ii) the taking of any action by any Loan Party that is not then permitted by the terms of this Agreement or any other Loan Document, such Default or Event of Default shall be deemed to be cured on the earlier to occur of (x) the date on which such action would be permitted at such time to be taken under this Agreement and the other Loan Documents pursuant to an applicable amendment or waiver permitting such action and (y) the date on which such action is unwound or otherwise modified to the extent necessary for such revised action to be permitted at such time by this Agreement and the other Loan Documents; *provided* that an Event of Default resulting from the failure to deliver a notice pursuant to such Section 6.03(1) shall cease to exist and be cured in all respects if the Default or Event of Default giving rise to such notice requirement shall have ceased to exist and/or be cured.

(10) For purposes of determining compliance with any Section of Article VII, in the event that any Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time, shall be permitted under one or more of such clauses within the applicable Section as determined by the Borrower in its sole discretion at such time. For purposes of determining compliance with the incurrence of any Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Credit Agreement Refinanced Debt or Refinanced Debt, respectively, the Borrower and Subsidiaries may incur an incremental principal amount of Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement (*provided* that (1) any additional Indebtedness referenced in this sentence satisfies the other applicable requirements of the definition of Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness, as applicable (with such additional amounts incurred constituting a utilization of the relevant basket or exception contained in Section 7.02(b) pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of

Section 7.01). For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio or Basket, if on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Subsidiaries.

Section 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable). When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

Section 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio and the Total Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.07. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements of the Borrower have been delivered pursuant to Section 6.01(1) or (2), as applicable.

(2) For purposes of calculating any financial ratio or test (or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Adjusted EBITDA and the component financial definitions used therein attributable to any

Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.07 as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, synergies and operating expense reductions resulting from or related to any such Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than six fiscal quarters after the date of any such Specified Transaction (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are (i) reasonably identifiable and projected in the good faith judgment of the Borrower to result from such actions and (ii) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than six fiscal quarters after the date of such Specified Transaction, (b) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Adjusted EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period; *provided* that the foregoing cap shall not apply to adjustments made in accordance with Regulation S-X; *provided*, *further*, that amounts added back pursuant to this clause (3), when combined with adjustments pursuant to clauses (l) and (n) of the definition of "Adjusted EBITDA" and clause (1) of the definition of "Consolidated Net Income" shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis.

(4) In the event that (a) the Borrower or any Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the First Lien Net Leverage Ratio or Total Net Leverage Ratio (or similar ratio), in which case such incurrence,

issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(5) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the First Lien Net Leverage Ratio and/or Total Net Leverage Ratio, is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Subsidiary may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, no *pro forma* effect shall be given to any discontinued operations (and the Adjusted EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which financial statements of the Borrower have been delivered pursuant to Section 6.01(1) or (2), as applicable, on or prior to the relevant date of determination.

(8) [Reserved].

(9) Notwithstanding anything to the contrary herein, other than with respect to dividends or distributions that constitute Restricted Payments permitted hereunder, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a covenant of this Agreement that does not require compliance with a financial ratio or test (including pro forma compliance with any First Lien Net Leverage Ratio test, any Total Net Leverage Ratio test and/or any other financial ratio or test) (any such amounts, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement in the same covenant that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence Based Amounts**"), it is understood and agreed that the Fixed Amounts (and any cash proceeds thereof) be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence with respect to the same covenant.

Section 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the Available Amount immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must constitute a permitted use of the Available Amount.

Section 1.09 LIBOR Discontinuation. If at any time the Administrative Agent or the Borrower determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 3.03 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 3.03 have not arisen but the supervisor for the administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the applicable LIBOR Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the appropriate LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, written notice from the Required Lenders stating that such Required Lenders object to such amendment.

Section 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the dollar amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the First Lien Net Leverage Ratio and/or the Total Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(3) For purposes of determining compliance under any Basket under Article VII or VIII, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating net income in the Borrower's annual financial statements delivered pursuant to Section 6.01(1); *provided, however*, that the foregoing shall not be deemed to apply to the determination of any amount of Indebtedness. For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the Dollar equivalent of the principal amount of Indebtedness denominated in a foreign currency being incurred shall be calculated based on the exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such 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 extended, replaced, refunded, refinanced, renewed or defeased.

Section 1.11 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Commitments and Borrowings

Section 2.01 The Loans. Subject to the terms and conditions set forth in Section 4.01 hereof, each Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date Term Loans denominated in Dollars in an aggregate principal amount not to exceed such Term Lender's Closing Date Term Commitment on the Closing Date. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. The Closing Date Term Loans may be Base Rate Loans or LIBOR Rate Loans, as further provided herein. No Term Lender will fund any portion of the Term Loans with "plan assets" (within the meaning of the Department of Labor regulation located at 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA).

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Term Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent (*provided* that the notice in respect of the initial Term Borrowing on the Closing Date, or in connection with any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on the consummation of the Closing Date Refinancing or closing of such Permitted Acquisition or other transaction, as applicable). Each such notice must be received by the Administrative Agent not later than 1:00 p.m., New York time, (a) three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBOR Rate Loans or any conversion of Base Rate Loans to LIBOR Rate Loans and (b) one (1) Business Day prior to the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (a) above may be delivered one (1) Business Day prior to the Closing Date in the case of the Closing Date Term Loans. Each notice by the Borrower pursuant to this Section 2.02(1) must be made by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Sections 2.15 and 2.16, each Borrowing of, conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in Sections 2.15 and 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Each Committed Loan Notice shall specify:

(i) whether the Borrower is requesting a Term Borrowing, a conversion of Term Loans from one Type to the other or a continuation of LIBOR Rate Loans,

(ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),

(iii) the principal amount of Loans to be borrowed, converted or continued,

(iv) [reserved],

(v) the Class and Type of Loans to be borrowed or to which existing Term Loans are to be converted,

(vi) if applicable, the duration of the Interest Period with respect thereto and

(vii) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as LIBOR Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a LIBOR Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of LIBOR Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of LIBOR Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent by wire transfer in Same Day Funds to the Administrative Agent's Account not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 2:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 for the Borrowing on the Closing Date, and upon receipt of all requested funds, the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(3) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBOR Rate Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Lenders under the applicable Facility may require by notice to the Borrower that no Loans may be converted to or continued as LIBOR Rate Loans.

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. The determination of the LIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the prime rate used in determining the Base Rate promptly following the public announcement of such change.

(5) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than 6 Interest Periods in effect unless otherwise agreed in writing between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to a Refinancing Amendment, an Extension Amendment or an amendment in respect of Replacement Loans, the number of Interest Periods otherwise permitted by this Section 2.02(5) shall increase by three (3) Interest Periods for each applicable Class so established.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received written notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loan, prior to 1:00 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may (but shall be under no obligation to), in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon written notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans in whole or in part, with any applicable Prepayment Premium as provided in Section 2.18; *provided* that

(i) such notice must be received by the Administrative Agent not later than 3:00 p.m., New York time, (A) three (3) Business Days prior to any date of prepayment of LIBOR Rate Loans and (B) one (1) Business Day prior to any date of prepayment of Base Rate Loans;

(ii) any partial prepayment of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with, in the case of a LIBOR Rate Loan, any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(b) [Reserved].

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(1)(a) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(d) Each prepayment in respect of any Term Loans (other than with respect to Extended Loans) pursuant to this Section 2.05(1) may be applied to any Class of Term Loans as directed by the Borrower. Voluntary prepayments of any Class of Term Loans permitted hereunder shall be applied in a manner determined at the discretion of the Borrower and specified in the notice of prepayment; *provided* that the Borrower may prepay Term Loans of any Term Loan Class pursuant to this Section 2.05 without any requirement to prepay Extended Loans that were converted or exchanged from such Term Loan Class. Subject to Section 2.16(3), in the event that the Borrower does not specify the order in which to apply prepayments to reduce scheduled installments of principal or as between Classes of Term Loans, the Borrower shall be deemed to have elected that such proceeds be applied to reduce the scheduled installments of principal in direct order of maturity on a *pro rata* basis among Term Loan Classes.

(e) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Event of Default has occurred and is continuing or shall occur as a result thereof, (y) no offer pursuant to this Section 2.05(e) is made on a non-pro rata basis and no fees, consideration or other economics are offered or given on a non-pro rata basis in connection with any transaction pursuant to this Section 2.05(e) and (z) no proceeds of ABL Loans are used for this purpose, any Borrower Party may prepay the outstanding Term Loans (which Term Loans shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such purchase or prepayment) without premium or penalty on the following basis:

(A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the "**Discounted Term Loan Prepayment**"), in each case made in accordance with this Section 2.05(1)(e) and without premium or penalty.

(B) (1) any Borrower Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the "**Specified Discount Prepayment Amount**") with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the "**Specified Discount**") of such Term Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than $1,000,000 and whole increments of $500,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Specified Discount Prepayment Response Date**").

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a "**Discount Prepayment Accepting Lender**"), the amount and the Classes of such Lender's Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2) above*; provided* that if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each

such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the "**Specified Discount Proration**"). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) and each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than $5,000,000 and whole increments of $1,000,000 in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at

the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Borrower Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the "**Applicable Discount**") which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a "**Participating Lender**").

(3) If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender's Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the "**Identified Participating Lenders**") shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the "**Discount Range Proration**"). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term

Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Term Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than $1,000,000 and whole increments of $500,000 in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Term Lenders (the "**Solicited Discounted Prepayment Response Date**"). Each Term Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the "**Offered Discount**") at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the "**Offered Amount**") such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Borrower Party (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the "**Acceptable Discount**"), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Borrower Party from the Auction Agent of a copy of all

Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the "**Acceptance Date**"), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the "**Discounted Prepayment Determination Date**"), the Auction Agent will determine (in consultation with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the "**Acceptable Prepayment Amount**") to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(D). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a "**Qualifying Lender**"). The applicable Borrower Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender's Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the "**Identified Qualifying Lenders**") shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the "**Solicited Discount Proration**"). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) and each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the

Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(F) If any Term Loan is prepaid in accordance with subsections (B) through (D) above, a Borrower Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, by wire transfer to the Administrative Agent's Account in immediately available funds not later than 12:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) and Lenders as specified by the applicable Borrower Party in the applicable offer. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e). The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(1)(e), the relevant Borrower Party shall make a representation to the assigning or assignee Term Lenders, as applicable, that it does not possess material non-public information with respect to the Borrower and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders that have elected not to receive such information) or shall make a statement that such representation cannot be made.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(I) Each of the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.

(J) Each Borrower Party shall have the right, by written notice to the Auction Agent (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent), to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(K) The Administrative Agent (i) shall not be required to serve as the Auction Agent or have any other obligations to participate in (other than mechanical administrative duties), or facilitate any Discounted Term Loan Prepayment unless it is reasonably satisfied with the terms and restrictions thereof (for the avoidance of doubt, the Administrative Agent shall not be required to serve as Auction Agent whether or not it is satisfied with the terms and restrictions thereof) and (ii) shall not have any obligation to participate in, arrange, sell or otherwise facilitate, and will have no liability in connection with, any open market repurchases by Holdings, the Borrower or any of its Subsidiaries. If the Administrative Agent agrees to serve as Auction Agent, all provisions of Article IX and Sections 8.03, 10.04, and 10.05 herein shall inure to the benefit of the Auction Agent and shall be binding upon all Loan Parties and all Secured Parties in connection with this Agreement and the other Loan Documents as if all references herein and therein to "Administrative Agent" were to "Auction Agent".

(2) Mandatory.

(a) Within five (5) Business Days after financial statements are required to be delivered pursuant to Section 6.01(1) and the related Compliance Certificate is required to be delivered pursuant to Section 6.02(1), commencing with the delivery of financial statements for the fiscal year ending February 1, 2020, for each Excess Cash Flow Period, the Borrower shall, subject to clause (g) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 75% (such percentage as it may be reduced as described below, the "**ECF Percentage**") of Excess Cash Flow in excess of $2,000,000, if any, for such Excess Cash Flow Period covered by such financial statements (such payment, the "**ECF Payment**") *minus* the sum of all voluntary prepayments of:

(i) Term Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) but only to the extent repaid and/or cancelled (in an amount, in each case, in the case of prepayments pursuant to Section 2.05(1)(e) equal to the discounted amount actually paid in respect of the principal amount of such Term Loans and only to the extent, in each case, that such Loans have been cancelled) (including prepayments made after the end of the fiscal year covered by the relevant financial statements but prior to the making of such ECF Payment (such payments, the "**After Year-End Payment**"),

(ii) Credit Agreement Refinancing Indebtedness, to the extent secured on a *pari passu* basis with the Closing Date Term Loans (including, to the extent prepaid pursuant to an After Year-End Payment),

(iii) [reserved], and

(iv) Indebtedness in respect of the ABL Facility (including any Refinancing Indebtedness in respect thereof) or any Indebtedness under any other revolving facility that is secured on a *pari passu* basis with ABL Facility or the Closing Date Term Loans (in each case of this clause (iv), to the extent accompanied by a permanent reduction in the corresponding ABL Commitments or other revolving commitments) (in each case, including to the extent prepaid pursuant to an After Year-End Payment),

in the case of each of the immediately preceding clauses (i), (ii), (iii) and (iv), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or in connection with an After Year-End Payment, and in each case to the extent such prepayments are not funded with the proceeds of Funded Debt (other than borrowings under the ABL Facility), any proceeds from any ABL Cure Amount or any Cure Amount;

provided that the ECF Percentage for any fiscal year shall be (i) 50% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.75 to 1.00 and (ii) 25% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.00 to 1.00;

(and it being understood that following the making of any After Year-End Payment, (i) the First Lien Net Leverage Ratio shall be recalculated giving *pro forma effect* to such After Year-End Payment as if such payment were made during the fiscal year of the applicable ECF Payment and the ECF Percentage for purposes of making such ECF Payment shall be determined by reference to the First Lien Net Leverage Ratio after giving effect to such recalculation and (ii) if such After Year-End Payment is taken into account for such calculation, the After Year-End Payment shall not be applied to the calculation of the First Lien Net Leverage Ratio for purposes of determining the ECF Percentage for any subsequent ECF Payment);

provided, *further*, that:

(A) if at the time that any such prepayment would be required, the Borrower (or any Subsidiary) is required to discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such Excess Cash Flow on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time) but not on a greater than pro rata basis with respect to the then outstanding Term Loans;

(B) the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Excess Cash Flow shall be allocated to the Term Loans in accordance with the terms hereof; and

(C) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).

(b) (i) If (x) the Borrower or any Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Subsidiary of Net Proceeds (other than ABL Priority Collateral), the Borrower shall, subject to the ABL Intercreditor Agreement, prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds; *provided* that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii); *provided*, *further*, that:

(A) if at the time that any such prepayment would be required, the Borrower (or any Subsidiary) is required to discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such Net Proceeds on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time);

(B) the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof; and

(C) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof; *provided*, *further*, that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii).

(ii) Subject to the ABL Intercreditor Agreement, with respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in the business of the Borrower and its Subsidiaries (including, Permitted Acquisitions (and similar Investments) and capital expenditures) within (x) twelve (12) months following receipt of such Net Proceeds or (y) if the Borrower or any Subsidiary enters into a legally binding commitment to reinvest such Net Proceeds within twelve (12) months following receipt thereof, within the later of (A) twelve (12)

months following receipt thereof and (B) one hundred-eighty (180) days of the date of such legally binding commitment; *provided* that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.05.

(c) Within five Business Days following the receipt by the Borrower of the net proceeds in respect of a Cure Amount, the Borrower shall prepay the Term Loans in an amount equal to the Cure Amount, together with accrued and unpaid interest and other amounts due in respect of the Term Loans.

(d) If the Borrower or any Subsidiary incurs or issues any Indebtedness (A) not expressly permitted to be incurred or issued pursuant to Section 7.02(b) or (B) that constitutes Credit Agreement Refinancing Indebtedness or Refinancing Loans, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Net Proceeds.

(e) Except as otherwise set forth in any Refinancing Amendment or Extension Amendment,

(i) each prepayment of Term Loans required by Sections 2.05(2)(a) through (d) shall be applied to each Class of Term Loans then outstanding on a *pro rata* basis or a less than *pro rata* basis (but not greater than *pro rata* basis) with any other Term Loans (in each case, other than pursuant to a refinancing);

(ii) with respect to each Class of Loans, each prepayment pursuant to clauses (a) through (d) of Section 2.05(2) shall be applied to remaining scheduled installments of principal thereof following the date of prepayment in direct order of maturity; and

(iii) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment;

provided that with respect to the allocation of such prepayments under this clause (e) between a Class of existing Loans and a Class of Extended Loans, to the extent that the Borrower may allocate between such classes, the Borrower may allocate such prepayments as the Borrower may specify, subject always to the limitation that the Borrower may not allocate to such Extended Loans any such mandatory prepayment (other than in the case of a refinancing of Extended Loans) unless such prepayment under this clause (e) is accompanied by at least a *pro rata* prepayment, based upon the applicable remaining scheduled installments of principal due in respect thereof, of the Term Loans of the Class, if any, from which such Extended Loans were converted or exchanged (or such Term Loans of such existing Class have otherwise been repaid in full).

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to this Section 2.05(2) by 3:00 p.m. at least four (4) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment, the subsection of this Agreement pursuant to which such prepayment is being made and

provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment or other applicable share provided for under this Agreement. Each Term Lender may reject all or a portion of its Pro Rata Share, or other applicable share provided for under this Agreement, of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a) and (b) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 3:00 p.m., New York time, at least two (2) Business Days prior to the scheduled date of such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds remaining shall be offered to all Lenders which have not declined proceeds of the applicable prepayment event (on a *pro rata* basis as among such non-declining Lenders) and, to the extent that any such non-declining Lender does not accept such offer by 3:00 p.m., New York time, at least one (1) Business Day prior to the date of such prepayment, such remaining Declined Proceeds shall be retained by the Borrower and shall increase the Available Amount pursuant to clause (6) of the definition thereof or may be otherwise applied as set forth herein.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a "**Foreign Asset Sale**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**"), or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States or Canada, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States or Canada (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions available under by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all or the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary.

(i) Interest, Funding Losses, etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a LIBOR Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such LIBOR Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of LIBOR Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such LIBOR Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such

prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that:

(a) any such notice shall be received by the Administrative Agent by 3:00 p.m. New York time three (3) Business Days prior to the date of termination or reduction, and

(b) any such partial reduction shall be in an aggregate amount of $1,000,000 or any whole multiple of $500,000 in excess thereof or, if less, the entire amount thereof.

(2) Mandatory. The Closing Date Term Commitment of each Term Lender on the Closing Date shall be automatically and permanently reduced to $0 upon the making of such Lender's Closing Date Term Loans to the Borrower pursuant to Section 2.01.

(3) Application of Commitment Reductions. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07).

Section 2.07 Repayment of Loans.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the last Business Day of each fiscal quarter (with each such fiscal quarter end being set forth on Schedule 1.01(3)) until the Maturity Date, commencing with the last Business Day of the first full fiscal quarter following the Closing Date, in equal quarterly installments, an amount equal to the following:

(a) for each of the first four full fiscal quarters following the Closing Date, 0.75% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05),

(b) for each of the eight full fiscal quarters occurring thereafter, an aggregate principal amount equal to 1.25% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05),

(c) for each fiscal quarter occurring thereafter, an aggregate principal amount equal to 1.875% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and

(d) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date.

Section 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBOR Rate, for such Interest Period, *plus* the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of an Event of Default, the Borrower shall pay interest on principal due hereunder at the direction (which direction may be provided retroactively to the extent not applied following the occurrence of such Event of Default so long as such Event of Default is continuing) of the Required Lenders (unless such Event of Default is an Event of Default under Section 8.01(1) or Section 8.01(6), in which case the Default Rate shall automatically accrue upon the occurrence of such Event of Default under Section 8.01(1) or Section 8.01(6)), the Borrower shall pay interest on all amounts due hereunder, in each case at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(4) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest for any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day, 365-day or 366-day year, the yearly rate of interest to which the rate used in such calculation is equivalent to the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(5) In no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, R.S.C. 1985, c. C-46, as the same shall be amended, replaced or re-enacted from time to time) payable (whether by way of payment, collection or demand) by any Canadian Loan Party to the Administrative Agent or the Lenders under this Agreement or any other Loan Document exceed the effective annual rate of interest on the "credit advanced" (as defined in that section) under this Agreement or such other Loan Document lawfully permitted under that section and, if any payment, collection or demand pursuant to this Agreement or any other Loan Document in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by the mutual mistake of the Administrative Agent, the Lenders and such Canadian Loan Party, with such "interest" deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the Criminal Code Section, to result in a receipt by the Administrative Agent and the Lenders of interest at a rate not in contravention of the Criminal Code Section, such adjustment to be effected, to the extent necessary, as follows by the Administrative

Agent: firstly, by reducing the amounts or rates of interest required to be paid to the Lenders; and then, by reducing any fees, charges, commissions, premiums, expenses and other amounts required to be paid to the Lenders which would constitute "interest" under the Criminal Code Section. Notwithstanding the foregoing, and after giving effect to all such adjustments, if the Administrative Agent or the Lenders shall have received an amount in excess of the maximum permitted by the Criminal Code Section, then the applicable Canadian Loan Party shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Administrative Agent (but solely limited to the funds received from Lenders) and the Lenders in an amount equal to such excess.

(6) Any provision of this Agreement or any other Loan Document that would oblige any Canadian Loan Party to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property or hypothec on immovable that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Canadian Loan Party, who shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.

Section 2.09 Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified (including the fees due and owing to the Administrative Agent and Collateral Agent pursuant to the Administrative Agent Fee Letter). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed in writing between the Borrower and the applicable Agent).

Section 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(1) The Term Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c) and Section 1.163-5(b) of the proposed United States Treasury Regulations, as applicable, as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Term Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender, the Borrower shall execute and deliver to such Lender a Term Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) [Reserved].

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(1), and by each Lender in its account or accounts pursuant to Section 2.11(1), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(1) All payments hereunder to be made by the Borrower shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, by wire transfer to the Administrative Agent's Account for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, may, in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, in writing prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 12:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount

(excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(4) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Term Borrowing set forth in Section 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(5) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

(6) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(7) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein (including with respect to any discounted prepayment of Term Loans pursuant to Section 2.05(2)(e) or 2.05(2)(g)), if any Lender of any Class shall obtain payment or any other form of consideration in respect of any principal of or interest on account of the Loans of such Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact in writing, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other

Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 [Reserved].

Section 2.15 Refinancing Amendments.

(1) Refinancing Loans. At any time after the Closing Date, the Borrower or any Subsidiary Guarantor may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Refinancing Loans or Refinancing Commitments in each case pursuant to a Refinancing Amendment.

(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such conditions precedent as may be requested by the providers of the applicable Refinancing Loans; *provided* that upon the effectiveness of any Refinancing Amendment, no Event of Default shall have occurred and be continuing or result therefrom. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Refinancing Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15 and to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans). A Refinancing Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including by amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including by amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Refinancing Amendment), (c) provide that the lenders providing such Refinancing Loans may participate ratably in any voluntary prepayments made by the Borrower pursuant to Section 2.05(2) and (d) to the extent the Borrower requests to make such Refinancing Loans part of another Class of Term Loan then existing, make other amendments to the terms of any existing Term Loans, in the case of each clause (a), (b), (c) and (d), so that such Refinancing Term Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are not adverse to the applicable existing Term Loan Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Refinancing Loans.

(3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Persons providing the applicable Refinancing Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15. This Section 2.15 supersedes any provision in this Agreement to the contrary (including Section 10.01).

(4) Providers of Refinancing Loans. Refinancing Loans may be provided by any existing Lender (it being understood that no exiting Lender shall have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender on terms permitted by this Section 2.15; *provided,* that the Borrower shall offer each existing Lender an opportunity to participate in such Refinancing Loans on a pro rata basis; *provided, further*, that, other than with respect to existing Lenders, the Administrative Agent shall have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Refinancing Loans or Refinancing Commitments if such consent would be required under Section 10.07(b)(iii) for an assignment of Loans or Commitments to such Person.

Section 2.16 Extensions of Loans.

(1) Extension Offers. Pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and otherwise modify the terms of such Loans or Commitments pursuant to the terms set forth in an Extension Offer (each, an "**Extension**," and each group of Loans or Commitments so extended, as well as any Loans of the same Class not so extended, each being a separate "**tranche**" for purposes of this Section 2.16). Each Extension Offer will specify the minimum amount of Loans or Commitments with respect to which an Extension Offer may be accepted, which will be an integral multiple of $1,000,000 and an aggregate principal amount that is not less than $5,000,000, or if less, (a) the aggregate principal amount of such Loans outstanding or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans or Commitments offered to be extended pursuant to such Extension Offer, then the Loans or Commitments of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any "most favored nation" pricing provisions or any financial ratio tests. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness, including a condition that a minimum amount of Loans or Commitments of any or all applicable tranches be tendered.

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (each, an "**Extension Amendment**") as may be necessary or appropriate in order to effect the provisions of this Section 2.16, establish new tranches in respect of Extended Loans and Extended Commitments and such amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower

in connection with the establishment of such Extended Loans and Extended Commitments. An Extension Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including by amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including by amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Extension Amendment) and (c) to the extent the Borrower Request to make such Extended Loans part of another Class of Term Loans then existing, make other amendments to the terms of any such existing Term Loans, in the case of each clause (a), (b) and (c), so that such Extended Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are not adverse to the existing Term Loan Lenders (as determined in good faith by the Borrower) and no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom. This Section 2.16 supersedes any provision(s) in Section 2.13 or 10.01 to the contrary. Except (1) as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment and (2) upon the effectiveness of an Extension Amendment, no Event of Default pursuant to Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement. Any Lender of an existing Class of Term Loans that elects not to participate in Extended Loans or Extended Commitments of such Class of Term Loans shall be referred to herein as a "**Non-Extended Lender**".

(3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Loans and Extended Commitments will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:

(a) the final maturity date of such Extended Loans and Extended Commitments will be no earlier than the Latest Maturity Date applicable to the Loans or Commitments subject to such Extension Offer;

(b) the Weighted Average Life to Maturity of any Extended Loans that are Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;

(c) any Extended Loans that are Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments of the Term Loans (in each case, other than pursuant to a refinancing) and may participate on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) in any voluntary prepayments of the Term Loans;

(d) such Extended Loans and Extended Commitments are not secured by any assets or property that does not constitute Collateral and may not be secured on a senior basis to the existing Term Loans;

(e) such Extended Loans and Extended Commitments are not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party; and

(f) the covenants and events of default applicable to Extended Loans or Extended Commitments are substantially identical to, or, taken as a whole, no more favorable to the Lenders providing such Extended Loans or Extended Commitments than, those applicable to the Loans or Commitments subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that this clause (f) will not apply:

(A) if an Extension Offer is made with respect to all the Loans or Commitments of a particular Class and all such Loans or Commitments are accepted in such Extension Offer and amended pursuant to the applicable Extension Amendment or

(B) to any of the following:

(1) terms addressed in the preceding clauses (a) through (e),

(2) interest rate, fees, funding discounts and other pricing terms,

(3) redemption, prepayment or other premiums, and

(4) covenants and events of default applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Any Extended Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or condition), the Borrower and the applicable Extending Lender. The transactions contemplated by this Section 2.16 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.16 will not apply to any of the transactions effected pursuant to this Section 2.16.

Section 2.17 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default has occurred and is continuing, to the payment

of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(2) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18 Call Protection. In the event that all or any portion of the Closing Date Term Loans are repaid, prepaid or accelerated for any reason, including as a result of any mandatory prepayments, voluntary prepayments, payments made following acceleration of the Loans or after an Event of Default (other than mandatory prepayments pursuant to Section 2.05(2)(a) or (c) or amortization payments pursuant to Section 2.07) the Borrower shall pay to the Administrative Agent, for the benefit of Lenders holding such Closing Date Term Loans as an inducement for making the Closing Date Term Loans (and not as a penalty) an amount equal to the Prepayment Premium, which Prepayment Premium shall be fully earned, and due and payable, on the date of such payment or prepayment, or on the date such payment or prepayment is required to be made, as applicable, and non-refundable when made; *provided*, that no Prepayment Premium shall be payable with respect to the first $50,000,000 of prepayments of Closing Date Term Loans that occur in connection with a Qualifying IPO. If the Loans are accelerated or otherwise become due prior to their maturity date, in each case, as a result of an Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the amount of principal of and premium on the Loans that becomes due and payable shall equal 100% of the principal amount of the Loans plus the Prepayment Premium in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Lender as the result of the early prepayment and the Borrower agrees that it is reasonable under the circumstances currently existing. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length

transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

ARTICLE III

Taxes, Increased Costs Protection and Illegality

Section 3.01 Taxes.

(1) Except as required by applicable Law, any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent (including, for the avoidance of doubt, the Administrative Agent, if applicable) is required by applicable Law (as determined in the good faith discretion of such Loan Party or withholding agent) to make any deduction or withholding on account of any Taxes from any such payment under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent in writing of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall be entitled to make such deduction or withholding and shall pay any amounts deducted or withheld to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), the Lender or the Agent (as applicable) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which any Loan Party is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which any Loan Party is required by this Section 3.01 to pay, the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any properly completed and executed documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine

whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its inability to do so. Notwithstanding anything to the contrary herein, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(3)(a), (b) and (c) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) two properly completed and duly signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H-1 (any such certificate, a "**United States Tax Compliance Certificate**") and (B) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms), or

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, Form W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or H-3, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of such beneficial owner).

In addition, any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or Administrative Agent), two properly completed and duly signed copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding Tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 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 applicable 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. Solely for purposes of this paragraph, the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 3.01, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(4) In addition to the payments by a Loan Party required by Section 3.01(2), the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee or required to be withheld or deducted from a payment to such Tax Indemnitee attributable to any payment under or with respect to any Loan Document, and any Other Taxes paid or payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this paragraph (6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax

Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) The agreements in this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(8) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Non-Excluded Taxes or Other Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Non-Excluded Taxes or Other Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (8).

Section 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the U.S. money market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue LIBOR Rate Loans or to convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower in writing that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate) and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component, thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. If the Administrative Agent reasonably determines that for any reason in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof that:

(1) Dollar deposits are not being offered to banks in the U.S. money market for the applicable amount and Interest Period of such LIBOR Rate Loan,

(2) adequate and reasonable means do not exist for determining the LIBOR Rate (based upon methodology set forth in the definition thereof) for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or

(3) the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Required Lenders (in consultation with the Borrower) will so notify the Administrative Agent in writing and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain LIBOR Rate Loans, as the case may be, shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves.

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender or the Administrative Agent to any Tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the Canadian money market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender that is not otherwise accounted for in the definition of "LIBOR Rate" or this clause (c);

and the result of any of the foregoing shall be to increase the cost to such Lender or Administrative Agent of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the LIBOR Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or Administrative Agent, or to reduce the amount of any sum received or receivable by such Lender or Administrative Agent hereunder (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender or Administrative Agent setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender or Administrative Agent such additional amount or amounts as will compensate such Lender or Administrative Agent for such additional costs incurred or reduction suffered;

provided that such amounts shall only be payable by the Borrower to the applicable Lender or Administrative Agent under this Section 3.04(1) so long as it is such Lender's or Administrative Agent's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any LIBOR Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a LIBOR Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such LIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the "floor" specified in the proviso to the definition of "LIBOR Rate".

Section 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue LIBOR Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into LIBOR Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of LIBOR Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's LIBOR Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Rate Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding LIBOR Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred-eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make LIBOR Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(1), (3) any Lender is a Non-Consenting Lender or Non-Extended Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon written notice to such Lender and the Administrative Agent:

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 and any Prepayment Premium pursuant to Section 2.18 that would otherwise be owed in connection therewith) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Term Notes evidencing such Loans to the Borrower (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Term Notes shall not render such sale and purchase (and the corresponding assignment) invalid and upon payment to the Lender being replaced of the amounts set forth in clause (ii) (and the payment to the Administrative Agent set forth in clause (i)) such assignment shall be recorded in the Register and the Term Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans and Commitments, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws; and

(vii) if the Administrative Agent is a Lender hereunder, the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date (including any Prepayment Premium pursuant to Section 2.18 that would otherwise be owed in connection therewith); *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender**."

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment, satisfaction or discharge of all other Obligations under this Agreement and resignation of the Administrative Agent.

ARTICLE IV

Conditions Precedent to Term Borrowings

Section 4.01 Conditions to Term Borrowings on Closing Date. The obligation of each Lender to make the Closing Date Term Loans on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent:

(1) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals unless otherwise reasonably agreed by the Administrative Agent) unless otherwise specified, each properly executed, as applicable, by a Responsible Officer of the signing Loan Party:

(a) a Committed Loan Notice;

(b) executed counterparts of this Agreement, the ABL Intercreditor Agreement (acknowledged by each Loan Party party thereto), the Guaranty (in the case of Holdings and each other Guarantor) and each other Loan Document (other than the Collateral Documents) required to be delivered on the Closing Date;

(c) executed counterparts of the 2019 ABL Amendment;

(d) each Collateral Document set forth on Schedule 4.01(1)(d) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with:

(i) subject to the Collateral and Guarantee Requirement, certificates, if any, representing the Pledged Collateral referred to therein, and to the extent certificated, accompanied by undated stock or note powers executed in blank; and

(ii) evidence that all UCC-1 financing statements (or equivalent forms) in all jurisdictions in which the Required Lenders reasonably determine registration is necessary to perfect or render opposable to third parties the Liens intended to be created by the Loan Documents and to satisfy the Collateral and Guarantee Requirement shall have been made, or arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(e) a recent certificate of good standing, certificate of status, certificate of compliance or analogous certificate for each Loan Party, customary certificates with regard to the Organizational Documents, and resolutions or other actions, incumbency certificates or other certificates of Responsible Officers of each Loan Party evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(f) a customary legal opinion from each of (i) Kirkland & Ellis LLP, special counsel to the Loan Parties and (ii) Keating Muething & Klekamp PLL, special Ohio counsel to the Loan Parties; and

(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

provided, *however*, that each of the requirements set forth in clause (1)(d) above, including the delivery of any document(s) or instrument(s) necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on Collateral may be perfected by (x) the filing of UCC financing statements, (y) the delivery of the stock certificate of the Borrower and its owned Domestic Subsidiaries as set forth in the Collateral and Guarantee Requirement or (z) the filing of the applicable filings for Intellectual Property that constitutes Collateral with the United States Patent and Trademark Office or the United States Copyright Office) will not constitute conditions precedent to the Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver, or cause to be delivered, such documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within 30 days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion).

(2) The Structuring Advisor shall have received the Pro Forma Financial Statements.

(3) The Administrative Agent shall have received at least three (3) Business Days before the Closing Date a properly completed and duly executed copy of IRS Form W-9 from the Borrower in addition to all documentation and other information in each Loan Party reasonably determined by the Administrative Agent or Lenders to be required by applicable U.S. regulatory authorities required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested by the Administrative Agent or Lenders in writing by it at least ten (10) Business Days prior to the Closing Date.

(4) The Closing Date Refinancing shall have occurred or substantially simultaneous with the borrowings of the Closing Date Term Loans on the Closing Date will occur.

(5) The Administrative Agent shall have received a certification by a Responsible Officer of the Borrower that, to the knowledge of the Borrower, the representations and warranties contained in Article V hereof are true and correct in all material respects on and as of the Closing Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date.

(6) The Administrative Agent shall have received a certification by a Responsible Officer of the Borrower that prior to or substantially concurrently with the funding of the Closing Date Term Loans, (i) the Closing Date Refinancing shall have been consummated.

(7) Adjusted EBITDA of the Borrower and its Subsidiaries calculated on a *pro forma* basis for the twelve-month period ended May 4, 2019 shall be at least $103,000,000.

(8) HPS shall have received the VCOC Rights Letter duly executed by the Borrower.

(9) The Administrative Agent shall have received a counterpart to the Administrative Agent Fee Letter signed by the Borrower.

(10) All fees required to be paid on the Closing Date (including fees, charges and disbursements of counsel) and reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to (i) the Commitment Letter, to the extent invoiced at least 2 Business Days prior to the Closing Date and (ii) the Administrative Agent Fee Letter shall have been paid in full in cash substantially concurrently with the borrowing of the Closing Date Term Loans (which amounts may, at the option of the Borrower, be offset against the proceeds of the Closing Date Term Loans).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto. The Required Lenders shall notify the Administrative Agent when all conditions precedent in this Article IV have been satisfied.

ARTICLE V

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders, after giving effect to the Closing Date Refinancing, on the Closing Date and, to the extent required by a Refinancing Amendment, Exchange Amendment or other amendment hereto as set forth therein:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Material Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws, orders, writs, injunctions and orders, and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (1) (other than with respect to Holdings or the Borrower), (2)(a), (3), (4) and (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents or any shareholders' agreement, unanimous shareholders' agreement or sole shareholder declaration by which such Loan Party is bound;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries of Holdings (including the Borrower) (other than as permitted by Section 7.01) under (i) any Contractual Obligation in excess of the Threshold Amount to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(1) The unaudited *pro forma* consolidated balance sheet and related unaudited *pro forma* consolidated statement of income of the Borrower as of and for the 12-month period ending on February 2, 2019, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of the statement of income) (collectively, the "**Pro Forma Financial Statements**"), copies of which have heretofore been furnished to the Administrative Agent and the Required Lenders, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Borrower and its consolidated Subsidiaries as of February 2, 2019 and their estimated results of operations for the period covered thereby.

(2) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation. Except as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, (1) by or against Holdings, the Borrower or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect or (2) in respect of the Torrid Transactions (as defined in the Second Supplemental Indenture, dated as of January 9, 2018, among, *inter alios*, Hot Topic and The Bank of New York Mellon Trust Company, N.A.).

Section 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower its Subsidiaries pending or, to the knowledge of the Borrower, overtly threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

Section 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Subsidiaries has become subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; and (d) none of the Loan Parties or any of their respective Subsidiaries

or, to the knowledge of the Borrower, any of their predecessors or any third party has treated, stored, transported or Released Hazardous Materials in violation of applicable Environmental Laws at or from any real estate or facility currently or formerly owned, leased or operated by any of the Loan Parties or any of their respective Subsidiaries.

Section 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), which are due and payable, except those Taxes which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.

There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Subsidiaries except (i) those being actively contested by a Loan Party or such Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (a) No ERISA Event has occurred or is reasonably expected to occur;

(b) no Pension Plan has failed to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan;

(c) none of the Loan Parties or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan;

(d) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(e) neither any Loan Party nor any ERISA Affiliate has been notified in writing by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been determined to be in endangered or critical status and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status,

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any financial obligation in connection with the termination of or withdrawal from any Foreign Plan.

Section 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and the ABL Loan Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of each Subsidiary,

(b) the ownership interests of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership, and

(c) the Equity Interests of each Subsidiary described in clause (b) that are required to be pledged on the Closing Date after giving effect to the Transactions pursuant to the Collateral and Guarantee Requirement.

Section 5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is an "investment company" under the Investment Company Act of 1940.

Section 5.14 Disclosure. None of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, when furnished, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

Section 5.15 Intellectual Property; Licenses, etc. The Borrower and its Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how database rights and other Intellectual Property rights (collectively, "**IP Rights**") that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or

violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Anti-Terrorism Laws. No Loan Party is in material violation of any applicable Anti-Money Laundering Laws or any requirement of law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224, effective September 24, 2001 (the "**Executive Order**"), and USA PATRIOT Act. The use of proceeds of the Loans will not violate the Trading With the Enemy Act (50 U.S.C. §§ 1-44, as amended) or any applicable foreign asset control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V).

Section 5.18 Collateral Documents.

Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable Lien with the priority set forth in the Applicable Intercreditor Agreement (subject only to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the priority, perfection or the enforceability of, any pledge of or security interest in any Equity Interests of any Foreign Subsidiary or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law (other than the laws of Canada), (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) any Excluded Assets.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans issued hereunder only in compliance with (and not in contravention of) each Loan Document.

Section 5.20 Sanctions. None of Holdings, the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of Holdings, the Borrower or any Subsidiary has violated Sanctions or is a Sanctioned Person. The Borrower shall not use the proceeds of the Loans, directly or, to the Borrower's knowledge, indirectly, for the purpose of financing activities of or with any Sanctioned Person, or in any country or territory that, at the time of such financing is, or whose government is, the subject or target of any applicable Sanctions, or in any other manner that would result in a violation of applicable Sanctions by any Person that is a party to this Agreement, except to the extent licensed by OFAC or otherwise authorized under U.S. or other applicable law.

Section 5.21 Anti-Corruption Laws. None of Holdings, the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of Holdings, the Borrower or any Subsidiary, has made, offered, promised, or authorized, and no part of the proceeds of the Loans will be used directly or, to the Borrower's knowledge, indirectly, for any unlawful payments to any governmental official or employee, political party, official of a political party, candidate for political office, or any other Person acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation of any applicable Anti-Corruption Laws (any such unlawful payment, offer, promise, or authorization an "**Anti-Corruption Prohibited Activity**").

Section 5.22 Release of Guarantee. On the Closing Date after giving effect to the Transactions and the use of proceeds of the Closing Date Term Loans on the Closing Date, the Hot Topic Guarantee shall have been terminated, released and otherwise shall be of no further effect (other than with respect to contingent obligations for which no claim has been made).

Section 5.23 No Default. On the Closing Date, after giving effect to the Transactions, no Default has occurred and is continuing or would result from the consummation of the Transactions.

ARTICLE VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, Holdings shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of its Subsidiaries (including the Borrower) to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(1) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending February 1, 2020, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year (including a summary of fourth fiscal quarter balance sheet and statements of income or operations, stockholders' equity and cash flows which, for the avoidance of doubt, shall not be audited), together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers, LLC or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount or (ii) any actual or prospective breach of the Financial Covenants or any other financial maintenance covenant);

(2) as soon as available, but in any event within forty-five (45) days (or, with respect to the fiscal quarter ending May 4, 2019, within sixty (60) days) after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower commencing with the fiscal quarter ending May 4, 2019, a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) condensed consolidated statement of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in

comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by an Officer's Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;

(3) as soon as available, but in any event within thirty (30) days after the end of each of the first two (2) fiscal months of each fiscal quarter of the Borrower, commencing with the fiscal month ending June 1, 2019, management's presentation of the information set forth on Schedule 6.01(3) hereto and a summary income statement and balance sheet of the Borrower and its subsidiaries prepared on a consolidated basis;

(4) prior to the consummation of a Qualifying IPO of the Borrower, within ninety (90) days after the end of each fiscal year of the Borrower, a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected operations or income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood by the Secured Parties that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and the Investors and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); and

(5) quarterly, upon request of the Administrative Agent (for the benefit of all the Lenders and not any one Lender individually), at a time mutually agreed with the Borrower that is promptly after the delivery of the information required pursuant to Sections 6.01(1) or (2) above, as applicable, commencing with the delivery of information with respect to the first fiscal quarter ending after the Closing Date, to participate in a conference call for Lenders to discuss the financial position and results of operation of the Borrower and its Subsidiaries for the most recently ended fiscal quarter for which financial statements have been delivered.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of PricewaterhouseCoopers, LLC or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (x) shall be prepared in accordance with generally accepted auditing standards and (y) shall not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount or (ii) any actual or prospective breach of any financial maintenance covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to any transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Section 6.01.

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP, or the respective interpretation thereof, and that such restatements will not result in a Default or an Event of Default under the Loan Documents.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender:

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the fiscal quarter ending August 3, 2019), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any securities exchange or commission, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the ABL Facility, so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), a report setting forth the information required by Sections 1(a), (e) and (f), Section 2(a) and Section 11 of the Perfection Certificate (or confirming that there has been no change in such information since the latter of the Closing Date or the last such report); and

(5) promptly, such additional information regarding the business and financial affairs of any Loan Party or any Material Subsidiary, or compliance with the terms of the Loan Documents, as the Required Lenders may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered to the Administrative Agent and Lenders on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent in writing of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower, its Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent will treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent in writing of:

(1) the occurrence of any Default or Event of Default; and

(2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or its Subsidiary or (c) the occurrence of any ERISA Event or any other event or occurrence, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clauses (1) or (2) of this Section 6.05 to the extent (other than with respect to the preservation of the existence of the Borrower set forth in clause (1)) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or to the extent such non-compliance is in connection with a merger, amalgamation, consolidation, liquidation, dissolution or disposition permitted by Article VII.

Section 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in reasonably good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to the Borrower's and its Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Borrower or any Subsidiary be required to obtain or maintain insurance that is more restrictive than what is consistent with past practice. Each such policy of insurance will as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder; *provided* that to the extent that the requirements of this Section 6.07 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days of the Closing Date (or such later date as the Administrative Agent may agree).

(2) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower will, or will cause each Loan Party to (a) maintain, or cause to be maintained, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (b) deliver to the Collateral Agent (A) evidence as to whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, (B) the Borrower's written acknowledgment of receipt of written notification from the Administrative Agent as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (C) copies of an application for a flood insurance policy *plus* proof of premium payment, a declaration page confirming that such flood insurance has been issued, or such other evidence of such flood insurance reasonably satisfactory to the Administrative Agent and naming the Collateral Agent as mortgagee and loss payee (the requirements of clauses (a) and (b) being the "**Flood Insurance Requirements**").

Section 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property (including ERISA, the USA PATRIOT Act, applicable Sanctions and the FCPA), except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower*; provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02. The Lenders shall indemnify the Administrative Agent for all costs, fees and expenses incurred by the Administrative Agent under this Section 6.10 whether or not the Borrower is required to reimburse the Administrative Agent for such costs, fees and expenses.

Section 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Subsidiary or (iii) an Excluded Subsidiary that is a Material Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within sixty (60) days (or such greater number of days specified below) after such formation or acquisition or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion cause such Material Subsidiary required to become a Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within sixty (60) days after such formation or acquisition, cause each such Material Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent supplements to the Security Agreement, a counterpart signature page to the Intercompany Subordination Agreement, Intellectual Property Security Agreements and other security agreements and documents necessary to satisfy the Collateral and Guarantee Requirement, as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation or acquisition, cause each such Material Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and a joinder to the Intercompany Subordination Agreement substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Subsidiary;

(C) within sixty (60) days) after such formation or acquisition, take and cause (i) the applicable Material Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement, (ii)(x) to the extent applicable, each direct or indirect parent of such applicable Material Subsidiary and (y) such applicable Material Subsidiary to the extent it is the direct or indirect parent of any CFC, Foreign Subsidiary Holding Company, Canadian Subsidiary or other Foreign Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code and/or PPSA financing statements (or equivalent forms) and delivery of stock and membership interest

certificates to the extent certificated) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request (with such opinion being consistent with the Opinion of Counsel delivered to the Administrative Agent on the Closing Date);

provided that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(2) Material Real Property.

(a) Notice.

(i) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the formation or acquisition of a Material Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Material Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Material Subsidiary.

(ii) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party (other than Holdings), after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within one hundred and twenty (120) days of the formation or acquisition of such Material Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each applicable jurisdiction (the "**Mortgage Policies**") in form and substance, with endorsements, including zoning endorsements, available in the applicable jurisdiction and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured (as applicable) by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents) and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction and with respect to any property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality or a zoning report from Planning and Zoning Resources Corporation (or other similar company reasonably acceptable to the Collateral Agent), in each case to be reasonably satisfactory to the Collateral Agent;

(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings, the authorization, execution and delivery of the Mortgages and such other matters as the Collateral Agent may reasonably request, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) American Land Title/American Congress on Surveying and Mapping surveys for each Material Real Property or existing surveys together with customary no change affidavits, in each case certified to the Collateral Agent if deemed necessary by Collateral Agent in its reasonable discretion, sufficient for the title insurance company issuing a Mortgage Policy to remove the standard survey exception and issue standard survey related endorsements;

(v) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property (where applicable) containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws, and if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be a special flood hazard area, the Borrower's duly executed acknowledgement of receipt of written notification from the Collateral Agent about special flood hazard area status and flood disaster assistance and evidence of compliance with the Flood Insurance Requirements; and

(vi) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have been prepared in connection with such formation or acquisition of any Material Subsidiary or acquisition of any Material Real Property.

(3) Except to the extent covered by another Collateral Document, the Borrower will, or will cause the applicable Loan Party to, maintain at all times all cash and Cash Equivalents (but excluding Excluded Funds or any Excluded Accounts) at Deposit Accounts or Securities Accounts with any financial institution that has entered into a Control Agreement; *provided* that (i) Control Agreements required to be delivered under this Section 6.11 with respect to deposit accounts and securities accounts existing as of the Closing Date shall be subject to the Collateral and Guarantee Requirement and (ii) upon the opening of any new Deposit Account or Securities Account, the Borrower shall have 60 days to put an applicable Control Agreement in place.

Section 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

Section 6.13 Further Assurances and Post-Closing Covenant. Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

Section 6.14 Use of Proceeds. The proceeds of the Closing Date Term Loans, together with borrowings under the ABL Facility, will be used on the Closing Date (i) to consummate the Closing Date Refinancing, (ii) to pay the Transaction Expenses and (iii) to the extent any such proceeds remain after the foregoing uses, for general corporate purposes not prohibited by the terms of this Agreement.

Section 6.15 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except to the extent such Lease is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, (c) notify the Administrative Agent of any default by any party with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing, except, in each case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.16 Accounting Changes. The Borrower shall, and shall cause its Subsidiaries to, maintain their fiscal year as in effect on the Closing Date; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.17 Nature of Business. The Borrower shall and shall cause its Subsidiaries to, engage in material line of business substantially the same as those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complimentary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and its Subsidiaries on the Closing Date.

Section 6.18 [Reserved].

Section 6.19 Anti-Terrorism Law; Anti-Money Laundering; Anti-Corruption Laws.

(1) Borrower shall not:

(A) Directly or indirectly (i) knowingly deal in, or otherwise knowingly engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law in violation of any applicable Anti-Terrorism Law or applicable Sanctions, (ii) knowingly transact business with or for the benefit of any Sanctioned Person in violation of applicable Sanctions, or (iii) otherwise knowingly engage in or conspire to engage in any transaction that violates or attempts to violate, any of the material prohibitions set forth in any applicable Anti-Terrorism Law or applicable Sanctions;

(B) Directly, or knowingly indirectly, undertake any Anti-Corruption Prohibited Activity;

(C) Violate any applicable Anti-Money Laundering Laws;

(D) (i) Repay the Loans, in whole or in part, using funds or properties of Holdings, the Borrower or any Subsidiaries that are, to the knowledge of the Borrower, derived from transactions or dealings with any Sanctioned Person or that are, to the knowledge of the Borrower, the property of any Sanctioned Person or the product of a violation of Sanctions or any Anti-Corruption Prohibited Activity or (ii) to the knowledge of the Borrower, permit any Sanctioned Person to have any direct or indirect interest, in Holdings, the Borrower or any of their respective Subsidiaries, with the result that the investment in Holdings, the Borrower or any of their respective Subsidiaries (whether directly or indirectly) or the Loans made by the Lenders would be in violation of any applicable Sanctions; and

(2) Each Loan Party will maintain in effect and enforce policies and procedures, as applicable, that are reasonably designed to ensure compliance by the Loan Parties and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws, Anti-Money Laundering Laws, and applicable Sanctions.

Section 6.20 Certain Affiliate Agreements. Each Loan Party that is party to any of the agreements set forth on Schedule 7.06 shall (a) perform and observe all the terms and provisions of each such agreement, as the same may be amended, waived, modified or replaced from time to time in a manner not materially adverse to the Loan Parties (as determined by the Borrower in good faith), to be performed or observed by it and (b) maintain and defend each such agreement in full force and effect in accordance with its terms, as the same may be amended, waived, modified or replaced from time to time in a manner not materially adverse to the Loan Parties (as determined by the Borrower in good faith); except to the extent, in each case (i) such agreement is no longer used or useful in the conduct of the business of such Loan Party in the ordinary course of business, consistent with past practices, (ii) Hot Topic or its Subsidiaries no longer constitutes an Affiliate of the Borrower or (iii) such agreement is replaced with an agreement whereby similar services are provided by a Person that does not constitute an Affiliate of the Loan Parties; it being understood and agreed that, for purposes of clauses (a) and (b) above, any such amendment, waiver, modification or replacement which has the effect of increasing the costs or expenses to be borne by the Loan Parties by more than 10% in the aggregate per annum over the amount of such costs and expenses as in effect on the Closing Date (or, with respect to the Reverse TSA, as of such date of

entry) shall be deemed to be materially adverse to the Loan Parties. Notwithstanding the terms of any agreement set forth on Schedule 7.06, the Loan Parties hereby agree to ensure that (x) the "Closing Date" (as defined in the IT Purchase Agreement) shall have occurred no later than August 1, 2020 and (y) the Loan Parties shall have completed the transition of each of the functions described as "TNDC IFC", "TNDC Retail Services" and "CADC IFC" (as each such term is used under the Shared Services Agreement as in effect on the Closing Date) to the Borrower's warehouse in West Jefferson, Ohio or a location owned by a Person that does not constitute an Affiliate of the Borrower by no later than December 31, 2020; *provided* that in the case of this clause (y), if as of December 31, 2020 any of Hot Topic or its Subsidiaries constitute an Affiliate of the Borrower, then no transition shall be required so long as from and after December 31, 2020 the economic terms associated with the foregoing functions, taken as a whole, are not less favorable, and the non-economic terms, taken as a whole, are not materially less favorable, in each case, to the Loan Parties than the terms set forth in the Shared Services Agreement as in effect on the Closing Date.

ARTICLE VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

Section 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) on any asset or property of the Borrower or any Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or Preferred Stock; and

(b) the foregoing clause (a) shall not apply to the following:

(1) Indebtedness of the Borrower and of its Subsidiaries under the Loan Documents (including Refinancing Loans, Extended Loans and Replacement Loans);

(2) [reserved];

(3) (a) the incurrence of Indebtedness by the Borrower and any Subsidiary in existence on the Closing Date listed on Schedule 7.02(3) (excluding Indebtedness described in the preceding clause (1) and clause (25) below);

(4) Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) incurred or issued by the Borrower or any Subsidiary and Preferred Stock issued by any Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness or Preferred Stock incurred or issued and outstanding under this clause (4), without regard to any Indebtedness listed on Schedule 7.02(3) and any Refinancing Indebtedness of the Indebtedness referred to in this clause (4), at such time not to exceed $15,000,000;

(5) Indebtedness incurred by the Borrower or any Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, completion guarantees warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion, bid, appeal or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(6) the incurrence of Indebtedness arising from agreements of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition that, in the case of earnouts or similar obligations, when aggregated with the principal amount of all other such Indebtedness incurred pursuant to this clause (6) does not exceed $2,000,000 at any one time outstanding;

(7) the incurrence of Indebtedness of the Borrower to a Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Subsidiary to the Borrower or another Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Subsidiary) to the extent permitted by Section 7.05; *provided* that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Subsidiary ceasing to be a Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Subsidiary issued to the Borrower or a Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) in respect of Hedge Agreements designed to hedge against fluctuations in interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business;

(11) [reserved];

(12) the incurrence of:

(a) unsecured Subordinated Indebtedness of the Borrower and unsecured Subordinated Indebtedness or Preferred Stock of the Borrower or any Subsidiary in an aggregate principal amount or liquidation preference up to 100.0% of the net cash proceeds received by the Borrower and its Subsidiaries since the Closing Date from the issue or sale of Equity Interests (other than Disqualified Stock) of the Borrower and the Subsidiary Guarantors or contributions to the capital of the Borrower and the Subsidiary Guarantors, including through consolidation, amalgamation or merger in each case excluding any ABL Cure Amount, any Cure Amount, or Indebtedness or Equity Interests issued to Holdings, the Borrower or any Subsidiary and solely to the extent Not Otherwise Applied; *provided*, that the interest payable in connection with any unsecured Subordinated Indebtedness incurred by the Borrower or any Subsidiary pursuant to this clause (12)(a) shall solely be "payable-in-kind"; and

(b) Indebtedness of the Borrower and Indebtedness or Preferred Stock of the Borrower or any Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed $15,000,000 at any one time outstanding *plus*, without duplication, in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, an amount equal to the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness;

(13) the incurrence by the Borrower or any Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness permitted under clauses (3) and (12)(a) above, this clause (13) and clauses (14), (30), or any successive Refinancing Indebtedness with respect to any of the foregoing;

(14) (a) Indebtedness of the Borrower or Indebtedness or Preferred Stock of a Subsidiary (in each case, only to the extent not incurred in contemplation thereof), assumed by the Borrower or any Subsidiary in connection with a Permitted Acquisition or any other similar Investment permitted hereunder; (b) Acquired Indebtedness and Indebtedness, Disqualified Stock or Preferred Stock of Persons that are

acquired by the Borrower or any Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Subsidiary in accordance with the terms of this agreement, that, when aggregated with the principal amount of all other Indebtedness and Preferred Stock then outstanding and incurred or assumed, as applicable, pursuant to this clause (14), together with any Refinancing Indebtedness in respect thereof, does not exceed $10,000,000 at any one time outstanding it being understood that with respect to assumed Indebtedness incurred under this clause (14), such Indebtedness is only the obligation of the Person and/or Person's Subsidiaries that are acquired or that acquire the relevant assets and such Indebtedness was not created in contemplation of such acquisition;

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) the incurrence of Indebtedness of the Borrower or any Subsidiary supported by letters of credit or bank guarantees permitted hereunder, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Subsidiary of Indebtedness or other obligations of the Borrower or any Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Subsidiary is otherwise permitted by this Section 7.02, or (b) any co-issuance by the Borrower or any Subsidiary of any Indebtedness or other obligations of the Borrower or any Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Subsidiary was permitted under this Section 7.02;

(18) the incurrence of Indebtedness issued by the Borrower or any Subsidiary to future, present or former employees, directors, officers, members of management and consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by the Borrower or any Subsidiary in connection with discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;

(22) the incurrence of Indebtedness of the Borrower or any Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) [reserved];

(24) the incurrence of Indebtedness by the Borrower or any Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) Indebtedness incurred pursuant to the ABL Facility so long as the aggregate outstanding principal amount of Loans (as defined in the ABL Credit Agreement) at any one time outstanding under the ABL Facility does not exceed the sum of (x) (i) prior to the effectiveness of any Incremental ABL Loans, $60,000,000 (and Aggregate Commitments (as defined in the ABL Credit Agreement) at such time no greater than $70,000,000) and (ii) on or following the effectiveness of any Incremental ABL Loans, $85,000,000 (and Aggregate Commitments (as defined in the ABL Credit Agreement) at such time no greater than $100,000,000), *plus* (y) other ABL Obligations not constituting principal and, in each case, together with any Refinancing Indebtedness in respect thereof; *provided*, that (I) an ABL Facility permitted pursuant to this clause (25) must be of the type that constitutes a bank-provided revolving credit facility (but which shall permit entering into any "first-out, last-out" or similar financings provided by such banks) and (II) this clause (25) shall not permit the incurrence of any Incremental ABL Loans under the ABL Facility unless as of the date on which the Incremental ABL Loans are effective (A) Adjusted EBITDA of the Borrower and its Subsidiaries for the most recently ended Test Period is equal to or greater than $130,000,000 calculated on a pro forma basis, (B) (i) the guarantors in respect of the Incremental ABL Loans, shall be the same as the guarantors under the existing ABL Facility, (ii) any assets or property pledged to secure the Incremental ABL Loans shall also be pledged to secure the existing ABL Facility and (iii) the terms of the applicable Incremental ABL Loans are the same as the terms of the existing ABL Facility (other than with respect to pricing, fees and, in the case of any "first-in last-out" or similar financing, advance rates and related definitions) and (C) no Event of Default shall have occurred and be continuing;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) the incurrence of Indebtedness by Subsidiaries that are not Guarantors in an amount not to exceed $2,000,000 at any one time outstanding in the form of ordinary course working capital lines of credit or local lines of credit that is non-recourse to any Loan Party and is not secured by assets constituting Collateral, together with any Refinancing Indebtedness in respect thereof;

(30) Credit Agreement Refinancing Indebtedness;

(31) [reserved];

(32) [reserved]; and

(33) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (32) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness or Preferred Stock (or any portion thereof) at the time of incurrence meets the criteria of more than one of the categories of Permitted Indebtedness or Preferred Stock described in clauses (1) through (33) above, the Borrower, in its sole discretion, may divide and classify, such item of Indebtedness or Preferred Stock (or any portion thereof) in more than one of the types of Indebtedness or Preferred Stock described in Section 7.02(b) and will only be required to include the amount and type of such Indebtedness or Preferred Stock (or a portion thereof) in such of the above clauses as determined by the Borrower at such time; *provided* that all Indebtedness incurred hereunder on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (25), respectively;

(2) [reserved];

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness or Preferred Stock (or any portion thereof) is incurred or issued pursuant to a fixed dollar Basket under Section 7.02(b) on the same date that an item of Indebtedness or Preferred Stock (or any portion thereof) is incurred or issued under an applicable incurrence test available under Section 7.02(b), then the applicable incurrence test under Section 7.02(b) will be calculated with respect to such incurrence under such incurrence test without regard to any incurrence under a fixed dollar Basket then available under Section 7.02(b); *provided* that unless the Borrower elects otherwise, the incurrence of Indebtedness or Preferred Stock will be deemed incurred or issued first under the then available incurrence test under Section 7.02(b) to the extent permitted with the balance incurred under a then available fixed dollar Basket under Section 7.02(b); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred to refinance Indebtedness or Preferred Stock incurred pursuant to clauses (3), (4), (12), (13), (14) and (25) of Section 7.02(b) will be permitted to include additional Indebtedness or Preferred Stock incurred to pay accrued but unpaid interest and dividends and premiums, defeasance costs and fees and expenses incurred in connection with such refinancing.

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Preferred Stock, the Dollar equivalent principal amount of Indebtedness or Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness or Preferred Stock was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness or Preferred Stock is issued to Refinance other Indebtedness or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated (or the applicable growth component with respect to such Basket, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness or Preferred Stock does not exceed (i) the principal amount of such Indebtedness or Preferred Stock (as applicable) being refinanced *plus* (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including OID, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness or Preferred Stock incurred to refinance other Indebtedness or Preferred Stock, if incurred in a different currency from the Indebtedness or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division" under the Delaware Limited Liability Company Act, except that:

(1) Subject to Section 3.03(a) of the Security Agreement, Holdings or any Subsidiary may merge, amalgamate or consolidate with the Borrower (including a merger, amalgamation or consolidation, the purpose of which is to reorganize or continue the Borrower into a new jurisdiction); *provided* that:

(a) the Borrower shall be the continuing or surviving Person,

(b) such merger, amalgamation or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof, the District of Columbia or Canada or any province or territory thereof, and

(c) in the case of a merger, amalgamation or consolidation of Holdings with and into the Borrower,

(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

(ii) Holdings shall have no direct Subsidiaries at the time of such merger, amalgamation or consolidation other than the Borrower,

(iii) no Default or Event of Default exists at such time or after giving effect to such transaction, and

(iv) after giving effect to such transaction, the direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Collateral Agent and the Borrower, (B) pledge 100% of the Equity Interests of the Borrower to the Collateral Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Collateral Agent and the Borrower and (C) be in compliance with Section 7.09;

(2) (a) (i) any Subsidiary that is not a Loan Party may amalgamate, merge or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary that is a Loan Party may merge or consolidate with a Subsidiary that is not a Loan Party so long as such transaction would otherwise constitute a Permitted Investment;

(b) any Subsidiary may amalgamate, merge or consolidate with or into any other Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person or shall otherwise constitute a Permitted Investment;

(c) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize or continue a Loan Party in another jurisdiction in the United States or Canada will be permitted, and

(d) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders;

provided that in the case of clauses (b) through (d) of this Section 7.03(2), (x) no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom and (y) the Person who receives the assets of such dissolving or liquidated Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of "Permitted Investments";

(3) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (x) the transferee must be a Loan Party or (y) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Subsidiary which is not a Loan Party;

(4) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, the Borrower may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower's assets, is the transferee of such assets) (any such Person, a "**Successor Borrower**"):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower; and

(C) deliver to the Administrative Agent (I) an Officer's Certificate stating that such merger, amalgamation or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) satisfies the requirements under this Section 7.03(4) and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions (similar in scope and substance to the opinions delivered to the Administrative Agent on the Closing Date) to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as may be agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger, amalgamation or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder, and

(C) if reasonably requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger, amalgamation or consolidation, will, by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent and the Borrower), confirm that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement;

(iii) after giving *pro forma* effect to such incurrence, the Total Net Leverage Ratio shall not exceed the lesser of (i) 2.50 to 1.00 and (ii) the applicable Financial Maintenance Covenant level as of such time; and

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to the such transaction a properly completed and duly executed copy of the IRS Form W-9 from such Successor Borrower in addition to all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; *provided further* that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(5) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, Holdings may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) Holdings will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger, amalgamation or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated, or

(iii) in connection with a disposition of all or substantially all of Holdings' assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a "**Successor Holdings**"), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, and

(C) (I) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (II) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower; and

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to the such transaction all documentation and other information in respect of the Successor Holdings required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement;

(6) any Subsidiary may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; *provided* that the continuing or surviving Person will be (a) the Borrower or (b) a Loan Party, in each case, which together with each of its Subsidiaries, will have complied with the applicable requirements of Section 6.11;

(7) a merger, amalgamation, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 (other than under clause (2)(c) of the definition of "Asset Sale");

(8) subject to Section 3.03(a) of the Security Agreement, the Borrower may (a) convert into a corporation, ULC, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States or Canada and (b) change its name;

(9) the Loan Parties and their respective Subsidiaries may consummate the Transactions; and

(10) the commencement of any proceedings against any Subsidiary under Debtor Relief Laws to the extent such proceedings do not constitute an Event of Default under Section 8.01(6).

Notwithstanding anything in this Section 7.03 and subject to the Collateral and Guarantee Requirement, in the event a Loan Party changes its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation or (ii) chief place of business or chief executive office, each Loan Party shall within 60 days (or such longer time period as may be agreed by the Collateral Agent) after any such change, give the Collateral Agent written notice of such change.

Section 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of, and

(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Subsidiary, as the case may be, and to the extent the consideration received in connection with the consummation of such Assets Sales exceeds $2,000,000 and is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower's or any Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed $2,000,000 on the date of the receipt of such Designated Non-Cash Consideration (or, at the

Borrower's option, at the time of contractually agreeing to such Asset Sale), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; or

(d) [reserved]; and

(3) the Net Proceeds of such Asset Sale shall be applied and/or reinvested as (and to the extent) required by Section 2.05(2)(b).

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing

In addition, none of the Borrower or any Subsidiary shall enter into any Sale-Leaseback Transaction unless (1) at the time of the consummation thereof no Event of Default has occurred and is continuing and (2) such Sale-Leaseback Transaction is conducted as an arm's-length basis and is for fair market value of the applicable property as determined by a Responsible Officer of the Borrower in good faith.

Section 7.05 Restricted Payments. (a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Subsidiary's Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(1) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(2) dividends, payments or distributions by a Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a wholly owned Subsidiary, the Borrower or a Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any unsecured Indebtedness, Subordinated Indebtedness or any Junior Lien Debt constituting Indebtedness for borrowed money ("**Restricted Junior Debt**" and any such payment, redemption, repurchase, defeasance, acquisition or retirement for value, a "**Restricted Junior Debt Payment**"), other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Restricted Junior Debt purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement;

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as "**Restricted Payments**");

(b) The provisions of Section 7.05(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("**Treasury Capital Stock**") or (ii) Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to the Borrower or a Subsidiary) of Equity Interests of the Borrower or any Parent Company (to the extent such Equity Interests or proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) and (y) within 120 days of such sale or issuance ("**Refunding Capital Stock**"), and

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Restricted Junior Debt of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Restricted Junior Debt of the Borrower or a Subsidiary Guarantor or Disqualified Stock of the Borrower or a Subsidiary Guarantor; *provided* such new Restricted Junior Debt shall mature no earlier, and not have a shorter weighted average life, than the Indebtedness being refinanced or exchanged and (iii) such newly issued Restricted Junior Debt otherwise satisfies the requirements set forth in the definition of "Refinancing Indebtedness",

(b) Disqualified Stock of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock of the Borrower or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence if such newly issued Disqualified Stock otherwise satisfies the requirements set forth in the definition of Refinancing Indebtedness,

(c) Disqualified Stock of a Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Subsidiary that is not a Subsidiary Guarantor, made within 120 days of such sale or issuance that, in each case, is and such newly issued Disqualified Stock otherwise satisfies the requirements set forth in the definition of Refinancing Indebtedness; and

(d) any Restricted Junior Debt or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower, any of its Subsidiaries or any Parent Company in connection with the Transactions; *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $2,500,000 in any fiscal year (increasing to $5,000,000 following a Qualifying IPO by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to the next two succeeding calendar years; *provided further* that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests and Not Otherwise Applied; *plus*

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are foregone in exchange for the receipt of Equity Interests of the Borrower or any Parent Company pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(c) the cash proceeds of life insurance policies received by the Borrower or its Subsidiaries (or by any Parent Company to the extent contributed to the Borrower) after the Closing Date; *minus*

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; *provided further* that cancellation of Indebtedness owing to the Borrower or any Subsidiary from any future, present or former employees, directors, officers, members of management, or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(5) [reserved];

(6) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Subsidiary after the Closing Date in accordance with Section 7.02;

(7) (a) payments made or expected to be made by the Borrower or any Subsidiary in respect of withholding or similar taxes payable with respect to payments to any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company in connection with such Person's purchase of Equity Interests of the Borrower or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company's common equity), following the first public offering of the Borrower's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed 6.0% per annum of the net cash proceeds thereof received by or contributed to the Borrower and Not Otherwise Applied and other than any public sale constituting an Excluded Contribution; *provided* that no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments made with the Available Amount; *provided* that (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) after giving *pro forma* effect thereto and the application of the net proceeds therefrom, (A) with respect to Restricted Payments (other than Restricted Investments), the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment is no greater than 1.00 to 1.00 and (B) with respect to Restricted Investments, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Investment is no greater than 1.50 to 1.00;

(11) distributions or payments of Securitization Fees;

(12) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or owed to any Affiliate(s);

(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Restricted Junior Debt from Excluded Proceeds (except to the extent included in the calculation of Available Amount);

(14) the declaration and payment of dividends or distributions by the Borrower or any Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes, and other fees, taxes and expenses, in each case, require to maintain their corporate or other legal existence;

(b) for any taxable period for which the Borrower or any of its Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (including for any taxable period for which the income of the

Borrower or its Subsidiaries are disregarded and are reflected on the income tax returns of such Parent Company) (a "**Tax Group**"), to pay the portion of any U.S. federal, foreign, state and local income taxes of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and its Subsidiaries (net of any payments of such taxes made by the Borrower or its Subsidiaries); *provided* that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and its Subsidiaries, as applicable, would have been required to pay as a stand-alone Tax Group; *provided* that losses or credits of a Subsidiary of the Borrower shall only be taken into account to the extent that such Subsidiary is actually a part of a Tax Group of the Parent Company;

(c) payment of expenses and indemnities (but not any fees) pursuant to the Management Services Agreement provided on behalf of, employees, directors, officers, members of management and consultants of any Parent Company attributable to the ownership of the Borrower;

(d) non-income taxes and general corporate or other operating, administrative, compliance and overhead costs and expenses (including customary, ordinary course salary or other compensation payable to the members of the board of directors of any Parent Company (to the extent such compensation relates solely to such Person's role at such Parent Company) and expenses relating to auditing and other accounting matters) of any Parent Company attributable to the ownership of the Borrower and its Subsidiaries; provided that no management, monitoring, consulting, transaction, advisory and other fees shall be payable to any Parent Company or any director, officer or member of management thereof pursuant to this clause (d);

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Borrower or its Subsidiaries under Section 7.06(b) (other than clause 2(a) thereof);

(g) [reserved];

(h) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; *provided* that:

(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment,

(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or another Loan Party (which, for the avoidance of doubt, shall not be designated as Excluded Contributions) or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or another Loan Party (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment,

(iii) such Parent Company and its Affiliates (other than the Borrower or any Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Subsidiary could have given such consideration or made such payment in compliance with this Agreement,

(iv) any property received by the Borrower may not increase amounts available for Restricted Payments with the Available Amount or increase any other basket hereunder which would otherwise increase based on the amount of cash or property contributed to the equity capital of the Borrower or its Subsidiaries; and

(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(15) [reserved];

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Subsidiary or any Parent Company;

(17) [reserved];

(18) making payments for the benefit of the Borrower or any Subsidiary to the extent such payments could have been made by the Borrower or any Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.06;

(19) payments and distributions to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement; and

(20) Restricted Payments in an aggregate amount not to exceed $12,000,000.

provided that for purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (21) of Section 7.05(b) or one or more of the clauses contained in the definition of "Permitted Investments" at the time of making such Restricted Payment, the Borrower will be entitled to divide or classify, in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among such clauses (1) through (21) of Section 7.05(b) or one or more clauses contained in the definition of "Permitted Investments," in any manner that otherwise complies with this Section 7.05.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Subsidiary permitted to be incurred under this Agreement.

Section 7.06 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly, make any payment to, or sell, lease, transfer, license, assign or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $1,000,000, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Subsidiary with a Person other than an Affiliate of the Borrower on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Subsidiary from a financial point of view and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $1,000,000, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Subsidiaries or between or among Subsidiaries or, in any case, any entity that becomes a Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement and effected for a *bona fide* business purpose;

(2) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition but, for the avoidance of doubt, not including any Permitted Investment);

(3) (a) so long as no Event of Default under Section 8.01(1) and Section 8.01(6) shall have occurred and be continuing or would result therefrom, the payment of expenses pursuant to the Management Services Agreement (including any unpaid expenses accrued in any prior year) or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Closing Date,

(b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and its officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors,

(c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice,

(d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company and

(e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Subsidiary;

(5) transactions in which the Borrower or any Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Subsidiary with a Person that is not an Affiliate of the Borrower on an arm's length basis;

(6) the existence of, the transactions pursuant to, or the performance by the Borrower or any Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date and set forth on Schedule 7.06 or that will be entered into after the Closing Date, or any amendment thereto or waiver, modification, termination or replacement thereof (so long as any such amendment, waiver, modification, termination or replacement (x) is not materially disadvantageous in the good faith judgment of the Board of Directors of the Borrower, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date and (y) is in compliance with clause (A) of Section 7.06(a)).

(7) the existence of, or the performance by the Borrower or any Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors of the Borrower, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, (other than those transactions governed by agreements set forth on Schedule 7.06) in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) sales of Securitization Assets in connection with any Qualified Securitization Facility;

(12) [reserved];

(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower, any Parent Company and any Subsidiary and Preferred Stock (and cancellation of any thereof) of any Subsidiary to any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;

(14) (a) investments by Affiliates (including any Investor or any Parent Company) in securities of the Borrower (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities of the Borrower contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and its Subsidiaries, in each case, in accordance with the terms of such securities;

(15) payments to or from, and transactions with, any joint venture in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto), other than transactions or joint ventures pursuant to, in connection with or in replacement or continuation of the arrangements described on Schedule 7.06;

(16) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to any tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries; *provided* that in each case (i) the amount of such payments in any taxable year does not exceed the amount that the Borrower and its Subsidiaries would be permitted to pay pursuant to Section 7.05(b)(14)(a), (b) and (d) and (ii) any amounts paid pursuant to this Section 7.06(b)(16) shall reduce the amounts permitted to be paid under Section 7.05(b)(14)(a), (b) and (d);

(17) any lease entered into between the Borrower or any Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(18) IP Rights licenses in the ordinary course of business, so long as the terms thereof are not materially less favorable to the Borrower than the comparable terms in the intellectual property license agreements in effect on on the Closing Date, if any;

(19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to the equity holders agreement or the registration rights agreement entered into on or after the Closing Date;

(20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;

(22) (a) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower or any Subsidiary owns, directly or indirectly, Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Subsidiary or any Parent Company, so long as in each case such transaction is in compliance with clause (A) of Section 7.06(a);

(23) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(25) [reserved];

payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness) or (b) other Indebtedness of the Borrower and its Subsidiaries held by any direct or indirect parent of Holdings; *provided* that such Obligations were acquired by a direct or indirect parent of Holdings in compliance herewith.

Section 7.07 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary Guarantor or is required to become a Guarantor to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of the Borrower or any such Subsidiary Guarantor to Guaranty the

Obligations or create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents; *provided* that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any Obligation (including the application of any remedy bars thereto) to any other Obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.07(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(i) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation and any definitive documentation in respect of the Indebtedness set forth on Schedule 7.02(b)(3);

(ii) any of the ABL Loan Documents;

(iii) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (a) above on the property so acquired;

(iv) applicable Law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Subsidiary (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries or the property or assets so acquired;

(vi) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(vii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;

(viii) [reserved];

(ix) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business or consistent with industry practice;

(x) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to IP Rights and other agreements;

(xi) restrictions created in connection with any Qualified Securitization Facility that, in the good faith determination of the Board of Directors of the Borrower, are necessary or advisable to effect such Qualified Securitization Facility;

(xii) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Subsidiary or the assets or property of another Subsidiary;

(xiii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Subsidiary;

(xiv) customary provisions restricting assignment of any agreement;

(xv) restrictions arising in connection with cash or other deposits permitted under Section 7.01 and any other agreement or instrument governing any Indebtedness or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to any Subsidiary than (A) the restrictions contained in the Loan Documents as of the Closing Date or the ABL Loan Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to that Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(xvi) (i) Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any Refinancing Indebtedness in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice;

(xvii) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.07;

(xviii) [reserved];

(xix) any encumbrances or restrictions of the type referred to in clause (a) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiii) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(xx) existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(xxi) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred pursuant to Section 7.02 is incurred.

Section 7.08 Modification of Terms of Restricted Junior Indebtedness. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower (on the basis of such proposed amendments, modifications or changes taken as a whole), any term or condition of any Restricted Junior Debt (other than as a result of any Refinancing Indebtedness in respect thereof) without the written consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed); *provided*, *however*, that no amendment, modification or change of any term or condition of any Restricted Junior Debt permitted by the Applicable Intercreditor Agreement or any subordination provisions set forth in the applicable Restricted Junior Debt or any other stand-alone subordination agreement in respect thereof shall be deemed to be materially adverse to the interests of the Lenders.

Section 7.09 Holdings. Holdings will not conduct, transact or otherwise engage in any business or operations or maintain any employees other than the following (and activities incidental thereto):

(1) the ownership or acquisition of the Capital Stock (other than Disqualified Stock) of the Borrower,

(2) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance,

(3) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the combined group of Holdings and the Borrower,

(4) the performance of its obligations under and in connection with, and payments with respect to, the Loan Documents, the ABL Loan Documents and any documents relating to other Indebtedness permitted to be incurred by the Borrower or its Subsidiaries under Section 7.02,

(5) any public offering of its common stock or any other issuance or registration of its Capital Stock for sale or resale not prohibited by this Article VII, including the costs, fees and expenses related thereto,

(6) repurchases of Indebtedness through open market purchases and Dutch auctions (in the case of Loans, to the extent permitted hereunder),

(7) [reserved],

(8) any transaction that Holdings is permitted to enter into or consummate under this Article VII and any transaction between or among Holdings and the Borrower or any one or more Subsidiaries permitted under this Article VII (*provided* that, to the extent Holdings wishes to make Restricted Payments to, or any Investment in, a Subsidiary it shall first make such Restricted Payment or Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Subsidiary) including:

(a) making any payment(s) or Restricted Payment(s) (i) to the extent otherwise permitted under this Section 7.09 and (ii) with any amounts received pursuant to transactions permitted under Section 7.05 (or the making of a loan to any Parent Company in lieu of any such payment(s) or Restricted Payment(s)) or holding any cash received in connection therewith pending application thereof by Holdings,

(b) making any Investment in the Borrower to the extent (i) payment therefor is made solely with the proceeds from Capital Stock of Holdings (other than Disqualified Stock), the proceeds of Restricted Payments received from the Borrower or proceeds of the issuance of, or contribution in respect of the, Capital Stock (other than Disqualified Stock) of Holdings and (ii) any property (including Capital Stock) acquired in connection therewith is contributed to the Borrower or a Subsidiary Guarantor (or, if otherwise permitted by Section 7.05 or constituting a Permitted Investment, a Subsidiary) or the Person formed or acquired in connection therewith is merged with the Borrower or a Subsidiary Guarantor;

(c) guaranteeing the obligations of the Borrower and its Subsidiaries to the extent such obligations are not prohibited hereunder and the incurrence of Liens on the Equity Interests of the Borrower;

(d) unsecured Indebtedness consisting of promissory notes issued by any Loan Party to future, present or former employees, directors, officers, managers, distributors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any Subsidiary or any Parent Company to finance the retirement, acquisition, repurchase, purchase or redemption of Capital Stock of Holdings,

(e) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes,

(f) providing indemnification to officers and directors and as otherwise permitted in this Article VII,

(g) activities incidental to the consummation of the Transactions,

(h) the making of any loan to any officers or directors contemplated by Section 7.05 or constituting a Permitted Investment, the making of any investment in the Borrower or any Subsidiary Guarantor or, to the extent otherwise allowed under Section 7.05 or constituting a Permitted Investment, a Subsidiary; *provided* that, to the extent Holdings wishes to make a loan to or any Permitted Investment in a Subsidiary it shall first make such loan or Permitted Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Subsidiary,

(i) making contributions to the capital of the Borrower (which may be further invested in its Subsidiaries),

(j) making Investments in cash and Cash Equivalents, or

(k) maintaining officers to the extent such roles are in effect on the Closing Date and maintaining members of its board of directors;

provided that any Investment of Holdings in the Equity Interests or other securities of the Borrower shall be subject to a Lien in favor of the Secured Parties.

(9) activities incidental to the businesses or activities described in clauses (1) through (8) of this Section 7.09.

Section 7.10 Financial Covenants.

(1) Commencing with the Test Period ending on November 2, 2019 and for each Test Period ending thereafter, the Borrower shall not permit the Total Net Leverage Ratio as of the last day of each Test Period set forth below to be greater than the Total Net Leverage Ratio set opposite such Test Period below (such requirement, the "**Financial Maintenance Covenant**"):

Test Period Ending	Total Net Leverage Ratio
November 2, 2019	3.60:1.00
February 1, 2020	3.35:1.00
May 2, 2020	3.35:1.00
August 1, 2020	3.35:1.00
October 31, 2020	3.10:1.00
January 30, 2021	2.50:1.00
May 1, 2021	2.35:1.00
July 31, 2021	2.10:1.00
October 30, 2021	2.10:1.00
January 29, 2022 and each fiscal quarter ending thereafter	1.85:1.00

(2) Commencing with the fiscal year ending February 1, 2020, the aggregate amount of Capital Expenditures paid in cash by the Borrower and its Subsidiaries, on a consolidated basis, for any fiscal year shall not exceed 37.5% of Adjusted EBITDA of the Borrower and its Subsidiaries (the "**CapEx Threshold Amount**") for the fiscal year ended immediately prior to the applicable fiscal year determined by reference to (1) in the case of the fiscal year ending February 1, 2020, the 2018 Audited Financial Statements delivered to the Structuring Advisor prior to the Closing Date and (2) for each fiscal year thereafter, the audited financial statements and related Compliance Certificate delivered pursuant to Section 6.01(1) (such requirement, the "**CapEx Financial Covenant**" and, together with the Financial Maintenance Covenant, the "**Financial Covenants**"); *provided* that, notwithstanding the foregoing, the aggregate amount of Capital Expenditures paid in cash in respect of any concept that does not constitute a "Torrid Concept" shall not exceed (1) during any four fiscal quarter period, $5,000,000 in the aggregate for such four fiscal quarter period and no unutilized amounts pursuant to this clause (1) shall be applied to the Carry Forward Amount (as defined below) and (2) during the tenor of the Term Facility, $15,000,000 in the aggregate. If in any fiscal year of the Borrower, the amount of Capital Expenditures paid in cash is less than the CapEx Threshold Amount, 50% of such difference (the "**Carry Forward Amount**") shall automatically be applied to increase the CapEx Threshold Amount in the immediately succeeding fiscal year of the Borrower for purposes of determining compliance with the CapEx Financial Covenant in such immediately succeeding fiscal year (with the Carry Forward Amount being deemed utilized prior to the CapEx Threshold Amount for such fiscal year).

ARTICLE VIII

Events of Default and Remedies

Section 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an "Event of Default":

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan, fee, premium (including the Prepayment Premium) or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any other Loan Party or, in the case of Section 7.09, Holdings fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(1) or 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; or

(3) Other Defaults. (a) Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document to be performed or observed by such Loan Party and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or (b) the Borrower fails to perform or observe the covenant contained in Section 7.10(1); *provided* that in the case of this clause (b) an Event of Default shall not occur until the expiration of the Cure Deadline without the consummation of the Cure Right; or

(4) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by the Borrower or any Subsidiary Guarantor herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(5) Cross-Default and Cross-Acceleration. Any Loan Party or any Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness referred to in the foregoing clause (a), or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower, or any Subsidiary Guarantor or any Subsidiary) with respect to such Indebtedness, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02, (B) this clause (5)(b) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of the non-payment of such Indebtedness or the non-payment or non-performance of obligations related thereto is to convert such Indebtedness into Equity Interests (other than Disqualified Equity Interests) and cash in lieu of fractional shares and (C) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided*, *further*,

that an ABL Event of Default (other than failure to comply with the ABL Financial Covenant (after giving effect to all applicable grace periods and the ability to exercise the ABL Cure Right in accordance with the terms thereof)) shall not constitute an Event of Default hereunder until the date that constitutes the earlier of (x) the date that occurs thirty days following the occurrence and continuance of the applicable ABL Event of Default and (y) the date on which a majority of the ABL Lenders have delivered a notice evidencing their intention to accelerate the ABL Obligations and such notice has not been rescinded; or

(6) Insolvency Proceedings, etc. Holdings, the Borrower, any Loan Party or any Significant Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, trustee, assignee, monitor, sequestrator, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, interim receiver, trustee, assignee, monitor, sequestrator, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against any Loan Party or any Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) calendar days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan or (c) with respect to a Foreign Plan a termination, withdrawal or noncompliance with applicable Law or plan terms; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery, and for any reason, other than (a) as expressly permitted by any Loan Documents (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions;

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, a valid and perfected Lien with the priority required by the Applicable Intercreditor Agreement (or other applicable Loan Document) on and security interest in any material portion of the Collateral, subject to Liens permitted under Section 7.01, except to the extent that (i) any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (ii) the loss thereof results from the failure of the Administrative Agent or the Collateral Agent (or its designee) to (a) maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents or (b) file Uniform Commercial Code amendments relating to a

Loan Party's change of name or jurisdiction of formation (but solely to the extent that the Borrower has timely provided the Collateral Agent written notice of such change of name or jurisdiction of formation thereof in accordance with the Loan Documents, and the Collateral Agent notifies the Borrower that it will be responsible for filing such amendments) and continuation statements or to take any other action within its sole control with respect to the Collateral and except as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(11) Subordination Provisions. Any material provision of any agreement, document or instrument governing governing the subordination of any Subordinated Indebtedness having an aggregate outstanding principal amount (individually or in the aggregate with all other Subordinated Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount cease to be in full force and effect other than (a) as expressly permitted by any Loan Documents, (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions; or

(12) Change of Control. There occurs any Change of Control.

Section 8.02 Remedies upon Event of Default. (a) If any Event of Default occurs and is continuing (other than an Event of Default under Section 8.01(3)(b) unless the condition in the proviso contained therein has been satisfied), the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments will be terminated;

(2) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts and premiums (including the Prepayment Premium) owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(3) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"), or any other event described in Section 8.01(6), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest, premiums (including the Prepayment Premium) and other amounts as aforesaid will automatically become due and payable without further act of the Administrative Agent or any Lender.

(b) Notwithstanding the foregoing or anything in the Loan Documents to the contrary, at the direction of the Required Lenders, the Administrative Agent may, in exercising remedies, take any and all necessary and appropriate action to effectuate a credit bid of all Loans (or any lesser amount thereof) for the Borrower's assets in a bankruptcy, foreclosure or other similar proceeding, forbear from exercising remedies upon an Event of Default, or in a bankruptcy proceeding, enter into a settlement agreement on behalf of all Lenders.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to the Applicable Intercreditor Agreement then in effect, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and all other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04, 10.05 and amounts payable under Article III) payable to the Administrative Agent and Collateral Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, premium (including the Prepayment Premium), indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III and the Administrative Agent Fee Letter) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Section 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01(3), in the event that the Borrower fails to comply with the requirement of the Financial Maintenance Covenant, any of the Permitted Holders, Holdings or any other Person designated by the Borrower shall have the right at any time during the period beginning at the start of the last fiscal quarter of the applicable Test Period and ending on or prior to the tenth (10th) Business Day after the date on which financial statements with respect to the Test Period in which such covenant is being measured are required to be delivered pursuant to Section 6.01 (such date, the "**Cure Deadline**"), to make a direct or indirect equity investment in the Borrower in cash in the form of common Equity Interests (or other Qualified Equity Interests reasonably acceptable to the Administrative Agent) (the "**Cure Right**"), and upon the receipt by the Borrower of net cash proceeds pursuant to the exercise of the Cure Right (the "**Cure Amount**"), the Financial Maintenance Covenant shall be recalculated, giving effect to a pro forma increase to Adjusted EBITDA for such Test Period in an amount equal to such Cure Amount; *provided* that such pro forma adjustment to Adjusted EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under the Financial Maintenance Covenant with respect to any Test Period that includes the fiscal quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document.

(2) If, after the receipt of the Cure Amounts and the recalculations pursuant to clause (1) above, the Borrower shall then be in compliance with the requirements of the Financial Maintenance Covenant during such Test Period, the Borrower shall be deemed to have satisfied the requirements of the Financial Maintenance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; *provided* that (i) the Cure Right may be exercised on no more than five (5) occasions, (ii) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Cure Right is exercised, (iii) the Cure Right shall not be exercised in consecutive fiscal quarters, (iv) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Borrower to be in pro forma compliance with the Financial Maintenance Covenant (such amount, the "**Necessary Cure Amount**") (*provided* that if the Cure Right is exercised prior to the date financial statements are required to be delivered for such fiscal quarter then the Cure Amount shall be equal to the amount reasonably determined by the Borrower in good faith that is required for purposes of complying with the Financial Maintenance Covenant for such fiscal quarter (such amount, the "**Expected Cure Amount**"), (v) subject to clause (3) below, all Cure Amounts shall be disregarded for purposes of determining any baskets or financial ratio or test calculations (other than with respect to the Financial Maintenance Covenant), with respect to the covenants contained in the Loan Documents and (vi) there shall be no pro forma or other reduction in Indebtedness (by netting or otherwise) with the proceeds of any Cure Amount for determining compliance with the Financial Maintenance Covenant for the fiscal quarter for which such Cure Amount is deemed applied unless such proceeds are actually applied to prepay Indebtedness, in which case, such reduction in Indebtedness may only be reflected in fiscal quarters subsequent to the Test Period with respect to which the applicable Cure Amount is exercised.

(3) Notwithstanding anything herein to the contrary, (A) to the extent that the Expected Cure Amount is (i) greater than the Necessary Cure Amount, then such difference may be used for the purposes of determining any baskets (other than any previously contributed Cure Amounts), with respect to the covenants contained in the Loan Documents or the Available Equity Amount or (ii) *less* than the Necessary Cure Amount, then not later than the applicable Cure Deadline, the Borrower must receive a direct or indirect equity investment in cash in the form of common Equity Interests (or other Qualified Equity Interests reasonably acceptable to the Administrative Agent), which cash proceeds received by Borrower shall be equal to the shortfall between such Expected Cure Amount and such Necessary Cure Amount and (B) prior to the Cure Deadline (x) the Lenders shall not be permitted to exercise any rights then available as a result of an Event of Default under Section 8.02 on the basis of a breach of the Financial Maintenance Covenant so as to enable the Borrower to consummate its Cure Right as permitted under this Section 8.04 and (y) the Lenders shall not be required to make any Loans unless and until the Borrower has received the Cure Amount required to cause the Borrower to be in compliance with the Financial Maintenance Covenant.

ARTICLE IX

Administrative Agent and Other Agents

Section 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints Cortland Capital Market Services LLC to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent and Collateral Agent to take such actions on its behalf and to exercise such rights, remedies and powers as are delegated to the Administrative Agent and Collateral Agent by the terms hereof or thereof (including any subordination and intercreditor agreements), together with such rights, actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.09, 9.11, 9.12 and 9.16) are solely for the benefit of the Administrative Agent, Collateral Agent and the Lenders; the Loan Parties shall not have rights as a third-party beneficiary of any such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement, 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 or Collateral Agent.

(2) The Administrative Agent shall also act as the "Collateral Agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the Collateral Agent of (and, in such capacity, to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, and to take all other actions, exercise all powers and perform such duties as are delegated to the Collateral Agent under the Collateral Documents, together with such powers and discretion as are reasonably incidental thereto. The Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent and/or Collateral Agent pursuant to Section 9.07 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof), or for exercising any rights and remedies with respect thereto), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent" under the Loan Documents) and Article X as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and Collateral Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any Applicable Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by the Administrative Agent, the Collateral Agent or their respective sub-agent(s) shall bind the Lenders and the other Secured Parties.

Section 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent or Collateral Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.03 Exculpatory Provisions. None of the Agents (including the Administrative Agent, Collateral Agent and their respective Agent-Related Persons), Structuring Advisor or Arranger shall have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, none of the Agents (including the Administrative Agent, Collateral Agent and their respective Agent-Related Persons), Structuring Advisor or Arranger:

(1) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent or Structuring Advisor or Arranger is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent or Structuring Advisor or Arranger is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent or Structuring Advisor or Arranger to liability or that is contrary to any Loan Document or applicable law; and

(3) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent, Structuring Advisor or Arranger or any of their Affiliates in any capacity.

No Agent nor any of their Agent-Related Persons shall be liable for any action taken or not taken (including (i) the making of (or omitting to make) any determination, calculations, selection, request, appointment, instruction, direction, election or providing any approval or consent to enter into any amendments, modifications or supplements or otherwise in connection with any provisions of the Loan Documents, (ii) the sending (or failure to send) any notice or the revocation (or failure to revoke) any notice, (iii) the exercise (or failure to exercise) of voting rights or powers, (iv) the filing or recording of any agreement, document or instrument (or the failure to file or records any agreement, document or instrument), (v) the exercise of any rights and remedies (and all actions incidental or related thereto), (vi) releasing, subordinating, and/or terminating any Lien or (vii) exercising any powers as the attorney-in-fact for any Loan Party) by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction (*provided*, that no action taken or not taken in accordance with clause (i) of this sentence, shall be deemed to constitute gross negligence or willful misconduct), in each case, in connection with its duties expressly set forth herein. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice (conspicuously identified as a "notice of default") describing such Default or Event of Default in sufficient detail is given to the Administrative Agent or Collateral Agent, as applicable, by the Borrower or a Lender and expressly 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 and Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents); *provided* that unless and until the Administrative Agent or Collateral Agent, as applicable, shall have received such direction, the Administrative Agent and Collateral 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, in its sole discretion.

None of the Administrative Agent, the Collateral Agent or any Agent-Related Person shall be liable or responsible for, or have any duty to ascertain or inquire into, (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report, instrument, statement or other document referred to or provided for in, or delivered to the Agents or Lenders hereunder or pursuant to the Loan Documents or in connection herewith or in connection with the Loan Documents or the transactions contemplated herein or therein, (iii) the performance or observance of any of the covenants, agreements, obligations, provisions or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the value, validity, enforceability, effectiveness, execution, collectability, sufficiency or genuineness of this Agreement, any other Loan Document or any other agreement, certificate, instrument or document, or the creation, attachment, perfection and/or priority of any Lien created or purported to be created in the Collateral by the Collateral Documents and/or the filing of financing statements, continuation and/or

amendment of any financing statements filed to perfect the Liens in the applicable Collateral, (v) the value or the sufficiency of any Collateral, (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or Collateral Agent, (vii) the inspection of the properties, books or records of any Loan Party or any Affiliate thereof, (viii) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations (ix) the use of the proceeds of the Loans, or (x) to make any disclosures with respect to the foregoing or otherwise relating to any Loan Party unless expressly required herein. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding of Loans or the component amounts thereof. Additionally, neither the Administrative Agent nor the Collateral Agent shall be responsible or have any liability for, or have any duty to (i) ascertain, inquire into, monitor or enforce compliance with the provisions hereof relating to Disqualified Institutions, Defaulting Lenders, Approved Funds, Affiliates of a Lender, Eligible Assignee, Affiliates of a Disqualified Institution, Affiliates of a Borrower, SPC, or Assignee Group (or otherwise determine whether a Person qualifies as a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group) or (ii) inquire into, monitor or enforce compliance with Section 10.07(b)(v) or Section 10.07(d). Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant qualifies as a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group and shall be permitted to treat each Lender, Participant, or prospective Lender or Prospective Participant as if it is not a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group unless and until it receives written notice of the same from Required Lenders or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information to any Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group. For the avoidance of doubt, neither the Administrative Agent nor Collateral Agent shall be obligated to calculate or confirm the calculations of the Financial Covenants set forth herein or the other Loan Documents or in any of the financial statements of the Loan Parties.

The duties of the Administrative Agent and Collateral Agent shall be mechanical and administrative in nature; neither the Administrative Agent nor the Collateral Agent shall have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or Collateral Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender hereunder authorizes and instructs the Administrative Agent and Collateral Agent to execute and perform its obligations hereunder and under each other Loan Document.

The Structuring Advisor and the Arranger shall be entitled to all indemnification and reimbursement rights in favor of the Administrative Agent as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, neither the Structuring Advisor nor the Arranger shall, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

Section 9.04 Lack of Reliance on the Administrative Agent. Each Lender expressly acknowledges that neither the Agents nor any Agent-Related Person have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Independently and without reliance upon the Administrative Agent, Collateral Agent

or any Agent-Related Person, each Lender and the holder of each Term Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition, affairs, business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrower and their respective Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and their respective Subsidiaries, based on such documents and information as such Lender has deemed appropriate, and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent and Collateral Agent shall not be (i) responsible to any Lender or any other Secured Party for (A) any recitals, statements, information, representations or warranties herein or in any other Loan Document or other document, certificate, requests, instruments, statement or other writing delivered in connection herewith, with the Loan Documents or the transactions contemplated herein or referenced or provided for herein or in the other Loan Documents, (B) the execution, effectiveness, value, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of the Holdings, the Borrower or any of their respective Subsidiaries or (C) the attachment, creation and/or perfection of the Liens granted or purported to be granted in the Collateral pursuant to the Collateral Documents, the filing of financing statements or the continuation and/or amendment of any financing statements filed to perfect the Liens in the applicable Collateral, (ii) required to make (or otherwise be responsible to the Lenders and the other Secured Parties for making) any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of their respective Subsidiaries or the existence or possible existence of any Default or Event of Default, (iii) required to calculate, or be responsible for the calculation, verification or confirmation of, the Prepayment Premium, or (iv) ascertain, inquire into, monitor or enforce, compliance with the provisions of Section 2.05(1)(e). Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent and Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent, Collateral Agent or any Agent-Related Person.

Section 9.05 Certain Rights of the Administrative Agent. The Administrative Agent and Collateral Agent may request instructions from the Required Lenders (or such greater percentage of Lenders required) prior to taking any action or entering into any amendments, modifications or supplements, making any determination (including as to whether any agreement, document or instrument is in form and substance satisfactory to such Agent), making any calculation (which shall be computed by the Required Lenders), sending any notice, revoking any notice, making a selection, request, election or appointment (including failing to make a selection, request, election or appointment), exercising any voting rights or powers (including failing to exercise any voting rights or powers), exercising any rights and remedies (and all actions incidental or related thereto), releasing, subordinating and/or terminating any Lien, exercising any powers as the attorney-in-fact for any Loan Party, providing any consent, approval, instruction or direction (including failing to provide any consent, approval, instruction or direction) or making (or failing to make) any filing or recording in connection with this Agreement or any of the other Loan Documents and may refrain (and shall incur no liability from so refraining) from taking or omitting to take any act or making any such determination, calculation, selection, request, exercising such voting rights or powers or providing such notice, approval or consent or entering into any amendments, modifications or supplements until it receives such instruction (or calculation, as applicable) from the Required Lenders (or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents) and such additional indemnity from the Lenders, in each case, as it deems

reasonably appropriate (and until such instructions and indemnity, as applicable, are received, the Administrative Agent and/or the Collateral Agent shall act, or refrain from acting, as it deems advisable in its sole discretion) and neither the Administrative Agent nor Collateral Agent shall incur liability to any Lender, any other Secured Party or any Borrower or Loan Party by reason of so refraining. Without limiting the immediately preceding sentence, in no event shall the Administrative Agent be required to (A) reallocate payments in accordance with Section 2.17(1)(b) without receiving direction from the Required Lenders, (B) approve the form of financial statements of the Borrower or any Opinion of Counsel without receiving direction from the Required Lenders, or (C) enter into any extension or amendment without receiving direction from the requisite percentage of the applicable Lenders. The Administrative Agent and Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with the request of the Required Lenders (or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent or Collateral Agent as a result of the Administrative Agent or Collateral Agent, as the case may be, acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders (or such greater percentage of Lenders required). Notwithstanding any other provisions set forth in this Agreement or any other Loan Documents, neither the Administrative Agent nor the Collateral Agent shall be required to take any action that is in its opinion contrary to applicable Law (including, for the avoidance of doubt, any action that may be in violation of the automatic stay under the Bankruptcy Code (or similar laws)) or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of the Bankruptcy Code (or any similar laws) or the terms of any of the Loan Documents that would in its reasonable opinion subject it or any of its officers, employees or directors to personal liability. Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption and/or funding its Loans, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by the Administrative Agent and/or Collateral Agent, Required Lenders or Lenders, as applicable, on the Closing Date or as of the date of funding such Loan.

Section 9.06 Reliance by the Administrative Agent. The Administrative Agent and Collateral Agent shall be entitled to rely upon, and shall be fully protected in relying upon (and shall not be liable for so relying upon), any communication, request, instrument, note, consent, affidavit, letter, writing, resolution, notice, statement, certificate, e-mail or other electronic message, order, internet or intranet website posting, or other document (or writing), conversation or telephone message signed, sent or made (or authenticated) by (or, in the case of a conversation, with) any Person that the Administrative Agent and/or Collateral Agent believed to be the proper Person, and, with respect to all legal matters (including all duties and obligations of Administrative Agent and Collateral Agent hereunder and under the other Loan Documents) pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of legal counsel, independent accountants and other experts and professional advisors selected by the Administrative Agent or Collateral Agent, as applicable. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation, transfer thereof shall have been filed with the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender, unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts or professional advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, professional advisors or experts.

Section 9.07 Delegation of Duties. The Administrative Agent and Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more of its agents, sub agents and/or attorneys in fact appointed by the Administrative Agent and/or Collateral Agent. The Administrative Agent, the Collateral Agent and any such agent, sub agent or attorney in fact may perform any and all of its duties and exercise its rights and powers as are delegated to the Administrative Agent and/or Collateral Agent, as applicable, together with such rights and powers as are reasonably incidental thereto, by or through their respective Agent-Related Persons. The exculpatory and indemnification provisions of this Article shall apply to any such agent, sub agent or attorney in fact and to the Agent-Related Persons of the Administrative Agent and Collateral Agent and any such agent, attorney in fact or sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent and Collateral Agent. Neither the Administrative Agent nor Collateral Agent shall be responsible for the negligence or misconduct of any agents, sub agents, attorney in fact or any of their respective Agent-Related Persons selected by it with reasonable care.

Section 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent) (each, an "**Agent Indemnitee**") is not timely reimbursed and indemnified by the Borrower, the Lenders will timely reimburse and indemnify and hold harmless the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent or otherwise acting in a capacity as a sub-agent for purposes of this Agreement or any other Loan Document) in proportion to their respective Pro Rata Share for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred at any time by the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document (including any indemnification provided by the Administrative Agent or Collateral Agent under any Loan Document); *provided* that no Lender shall be liable to an Agent Indemnitee for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent Indemnitee's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall timely reimburse the Administrative Agent and/or Collateral Agent, as applicable, upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent and/or Collateral Agent, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein or in any Loan Document, or in connection with any transaction contemplated hereunder, or in connection with any action taken or omitted to be taken by Administrative Agent, Collateral Agent or Agent-Related Person, as applicable, under or in connection with any of the foregoing including exercising any of the Agents' powers, rights, and remedies and performing their duties hereunder and thereunder (or omitting to do the same), in each case, to the extent that the Administrative Agent and/or Collateral Agent, as applicable, is not timely reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided*, *further*, that the failure of any Lender to indemnify or reimburse the Administrative Agent or Collateral Agent shall not

relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Loan Documents and Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent and Collateral Agent. If any indemnity furnished to the Administrative Agent or the Collateral Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

Section 9.09 The Administrative Agent and Collateral Agent in Their Individual Capacities. With respect to its obligation to make Loans under this Agreement, the Administrative Agent and Collateral Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent and Collateral Agent in their respective individual capacities. The Administrative Agent and Collateral Agent and their respective affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.10 Structuring Advisor and Arranger. Except as set forth herein, neither the Structuring Advisor nor the Arranger shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as a structuring advisor or arranger. Without limiting the foregoing, neither the Structuring Advisor nor the Arranger shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Structuring Advisor or the Arranger in deciding to enter into this Agreement or in taking or not taking action hereunder. Notwithstanding any other provisions set forth in this Agreement or the other Loan Documents, the Administrative Agent and Collateral Agent shall not be required to take any discretionary action or exercise any discretionary powers under this Agreement and/or any other Loan Document (including the issuance of any discretionary notices and the making of any discretionary calculations or determinations), except at the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent and Collateral Agent shall not be (i) required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent and/or Collateral Agent to liability or that is contrary to any Loan Document or applicable Law and (ii) liable for following any of such direction(s) by the Required Lenders or such other percentage of Lenders required hereunder.

Section 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 days' prior written notice to the Lenders (which, for purposes of this Section 9.11 shall include the Administrative Agent's capacity as Collateral Agent, unless otherwise stated). If the Administrative Agent is in material breach of its obligations hereunder as Administrative Agent, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent is a Defaulting Lender, the Borrower may remove the Defaulting Lender from such role upon 15 days' prior written notice to the Lenders.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower's approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 day period, the Administrative Agent may (but shall not be obligated to) appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 30th day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent's resignation or removal shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed; *provided* that (i) in its capacity as Collateral Agent, the retiring Administrative Agent may appoint a successor Collateral Agent and (ii) the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such Administrative Agent and Collateral Agent in respect of any actions taken or omitted to be taken by it in connection with holding such collateral security) and all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly (except for any indemnity payments or other amounts then owed to the retiring or removed Administrated and/or Collateral Agent), until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired or removed) Administrative Agent and Collateral Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent and Collateral Agent prior to the effectiveness of such removal or resignation), the terms "Administrative Agent" and "Collateral Agent" shall mean such successor agent effective upon such appointment and approval, and the retiring (or retired or removed) Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11) without any other or future act or deed on the part of such former Administrative Agent or Collateral Agent or any of the parties to this Agreement or any holders of the Loans. Any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder unless otherwise agreed.

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the resignation or removal of the Administrative Agent and Collateral Agent hereunder, the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such Administrative Agent and Collateral Agent, their respective sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while Administrative Agent was acting as Administrative Agent and Collateral Agent was acting as Collateral Agent, as applicable.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of such Administrative Agent and Collateral Agent for all of its actions and inactions while serving as the Administrative Agent and/or Collateral Agent.

Section 9.12 Collateral Matters. Each of the Lenders and the other Secured Parties hereby irrevocably authorize and instruct the Administrative Agent and the Collateral Agent (or its designee) to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, that, except as otherwise set forth herein, any action taken by the Required Lenders (or such greater percentage of Lenders required) in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders (or such greater percentage of Lenders required) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default (but shall have no obligation), to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in and subject to the provisions of this Section 9.12, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.12.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 10.24 or in any of the Collateral Documents; it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent shall have no duty unless and until expressly directed by Required Lenders and until the Collateral Agent receives such direction, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Agents shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence or collectability of the Collateral, the existence, priority or perfection of the Agents' Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, Liens therein or financing statements filed in connection therewith.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party (other than the Agents) shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or Debtor Relief Law with similar effect), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or the Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

Section 9.13 [Reserved].

Section 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor; (b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans 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 and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Administrative Agent and the Collateral Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and (c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, interim receiver, receiver and manager, assignee, trustee, liquidator, monitor, 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 Agents and their respective agents and counsel, and any other amounts due the Administrative Agent and Collateral Agent hereunder.

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.

To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent or Collateral Agent and/or their respective agents and counsel, and any other amounts due to the Administrative Agent and Collateral Agent under Sections 2.09 and 10.05 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be paid out of, any and all distributions, dividends, money, securities and other properties and/or amounts that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Section 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent or Collateral Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent and Collateral Agent are hereby authorized to appoint an additional individual or institution selected by the Administrative Agent and/or Collateral Agent (as applicable) in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Administrative Agent**" and collectively as "**Supplemental Administrative Agents**").

(2) In the event that the Administrative Agent or Collateral Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent and/or Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent, the Collateral Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent and/or Collateral Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent and Collateral Agent shall be deemed to be references to the Administrative Agent, Collateral Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent or Collateral Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent and/or Collateral Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent and/or Collateral Agent (as applicable) until the appointment of a new Supplemental Administrative Agent.

Section 9.16 Intercreditor Agreements. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the ABL Intercreditor Agreement, Term Intercreditor Agreement or any other Applicable Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the ABL Intercreditor Agreement, Term Intercreditor Agreement or any other Applicable Intercreditor Agreement, on the other hand, the terms and provisions of the ABL Intercreditor Agreement or Term Intercreditor Agreement, as the case may be shall control, and (c) each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereunder authorizes and instructs the Administrative Agent and Collateral Agent to execute and perform its obligations under the ABL Intercreditor Agreement (and any amendments, restatements, supplements or other modifications thereto approved in accordance with the terms thereof), the Term Intercreditor Agreement (and any amendments, restatements, supplements or other modifications thereto approved in accordance with the terms thereof) or any other Applicable Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

ARTICLE X

Miscellaneous

Section 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (with a copy to the Administrative Agent) (other than with respect to (i) any amendment or waiver contemplated in clauses (a) - (i) of this clause (1) below and (ii) any amendment or waiver with respect to the Fee Letters which shall only require the consent of the parties thereto), (or by the Administrative Agent) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that:

(a) only the consent of each affected Lender shall be required to extend or increase the Commitment of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) only the consent of each affected Lender shall be required to postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to such Lender, it being understood that the amendment or waiver of any mandatory prepayment shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums;

(c) only the consent of each affected Lender shall be required to reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (I) of the proviso immediately succeeding clause (i) of this Section 10.01(1)) any fees or other amounts payable hereunder or under any other Loan Document to such Lender (it being understood that any change to the definition of Total Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction in the rate of interest); *provided* that notwithstanding the foregoing only the consent of (A) the Required Lenders shall be necessary to amend the definition of "Default Rate" and (B) the Required Lenders' consent will be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), (x) no amendment, waiver or consent shall change any provision of this Section 10.01 or the definition of "Required Lenders", "Required Facility Lenders", "Supermajority Lenders" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender and (y) change the definition of "Pro Rata Share" without the written consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders, the Required Facility Lenders or the Supermajority Lenders);

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) no amendment, waiver or consent shall change the pro rata sharing of payments among Lenders pursuant to Section 2.12 or any other provision of this Agreement requiring pro rata treatment of the Loans or Lenders, in each case without the written consent of each Lender;

(h) no amendment, waiver or consent shall amend, waive or otherwise modify any term or provision (including the availability and conditions to funding and the rate of interest applicable thereto) which directly affects Lenders of one Facility and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Facility; or

(i) no amendment, waiver or consent shall amend, waive or otherwise modify the definition of "Change of Control," any term or provision of Section 2.05 or Article VII (other than any amendment, waiver or consent solely with respect to the ratio levels set forth in Section 7.10) or any component definition in any of the foregoing to the extent that an amendment thereto would otherwise modify such provision in a manner adverse to the Lenders, in each case without the written consent of the Supermajority Lenders;

provided that:

(I) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(II) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders or the Supermajority Lenders may be effected with the consent of the applicable Lenders other than Defaulting Lenders) (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded in calculating the Required Lenders, the Required Facility Lenders and the Supermajority Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Applicable Intercreditor Agreement (i) that is for the purpose of adding the holders of Credit Agreement Refinancing Indebtedness or any other Permitted Indebtedness that is secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Applicable Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the Applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Applicable Intercreditor Agreement; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time; and

(E) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any Mortgage or any other Collateral Document as may be necessary or appropriate in the opinion of the Collateral Agent and (ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e).

(2) In addition, notwithstanding anything to the contrary in this Section 10.01, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Loans**") with replacement term loans ("**Replacement Loans**") hereunder; *provided* that

(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, *plus* accrued interest, fees, premiums (if any) and penalties thereon and fees and expenses incurred in connection with such refinancing of Replaced Loans with such Replacement Loans,

(b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replaced Loans) immediately prior to such refinancing,

(c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing;

(d) no Event of Default shall have occurred and be continuing; and

(e) all other terms (other than with respect to pricing, premiums and optional prepayment or redemption terms) applicable to such Replacement Loans shall be substantially identical to, or no more favorable taken as a whole (in each case as determined by the Borrower in its reasonable judgment) to the Lenders providing such Replacement Loans than, those applicable to such Replaced Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing (*provided* that an Officer's Certificate delivered to the Administrative Agent at least 5 Business Days prior to the incurrence of such Replacement Loans, together with a reasonably detailed description of the material terms and conditions of such Replacement Loans or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (2) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent notifies the Borrower within such five 5 Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees));

provided further that each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents, intercreditor agreements, and related documents executed by Holdings, the Borrower or any Subsidiaries in connection with this Agreement and the other Loan Documents may be, amended, amended and restated, modified or otherwise waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, modification or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects, so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan

Documents (including by adding additional parties as contemplated herein or therein) so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, or (iv) to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or protect any security interest for benefit of the Secured Parties or to otherwise enhance the rights or benefits of any Lender under any Loan Document;

(b) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any obvious error, or any error or omission of a technical or immaterial nature, or any ambiguity, omission, defect or inconsistency so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment;

(c) technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (and no other Person) to the extent necessary to (i) to integrate any Refinancing Loans or Extended Loans, (ii) [reserved], (iii) to increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to any Class or Classes of Lenders hereunder, (iv) increase, expand and/or extend the call protection provisions and any "most favored nation" provisions benefiting any Class or Classes of Lenders hereunder (including, for the avoidance of doubt, the provisions of Sections 2.18 hereof) and/or (v) modify any other provision hereunder or under any other Loan Document in a manner more favorable to the then-existing Lenders or Class or Classes of Lenders, in each case in connection with the issuance or incurrence of any Indebtedness permitted hereunder, where the terms of any such Indebtedness are more favorable to the lenders thereof than the corresponding terms applicable to other Loans or Commitments then existing hereunder, and it is intended that one or more then-existing Classes of Loans or Commitments under this Agreement share in the benefit of such more favorable terms in order to comply with the provisions hereof relating to the incurrence of such Indebtedness; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Refinancing Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number or electronic mail address specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent in writing that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described and subject to the terms set forth in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent, the Collateral Agent or any of their respective Agent-Related Persons, the Structuring Advisor or the Arranger (collectively, the "**Agent Parties**") have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent Parties' transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent and the Collateral Agent may change its respective address or facsimile for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address or facsimile for notices and other communications hereunder by written notice to the Borrower, the Administrative Agent and the Collateral Agent. In addition, each Lender agrees to notify the Administrative Agent and the Collateral Agent in writing from time to time to ensure that the Administrative Agent and the Collateral Agent have

on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state and Canadian securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state or Canadian securities laws.

(6) Reliance by the Administrative Agent and Collateral Agent. The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify and hold harmless the Administrative Agent, the Collateral Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic communications to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender, the Administrative Agent, the Collateral Agent, the Structuring Advisor or the Arranger to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 or the Collateral Agent in accordance with the Security Agreement (and the other applicable Loan Documents), in each case, for the benefit of all the Secured Parties; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent or the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or Collateral Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Structuring Advisor and the Arranger for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent, the Structuring Advisor and the Arranger (promptly following a written demand therefor, together with backup documentation supporting such reimbursement request) incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Holland & Knight LLP, as primary counsel to the Administrative Agent, and Milbank LLP, as primary counsel to the Lenders and, if necessary, a single local counsel in each relevant material jurisdiction and one counsel for the Administrative Agent and Collateral Agent and a single local counsel in each relevant jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent, the Structuring Advisor, the Arranger and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and Collateral Agent and one local counsel in each relevant jurisdiction, and one counsel for the Structuring Advisor, the Arranger and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agent Indemnitees and each Lender, the Structuring Advisor, the Arranger and their respective Related Persons (collectively, the "**Lender Indemnitees**"; together with the Agent Indemnitees, collectively, the "**Indemnitees**") from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Agent Indemnitees taken as a whole (and if reasonably necessary, a single local counsel for all Agent Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Agent Indemnitees similarly situated taken as a whole) and one counsel to Lender Indemnitees taken as a whole (and, if reasonably necessary, a single local counsel for all Lender Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lender Indemnitees similarly situated taken as a whole)) any (i) actual or threatened claim, litigation, investigation, proceeding or Environmental Liabilities relating to the Transactions or (ii) to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, in connection with the transactions contemplated hereunder, the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a

material breach of any obligation under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent, structuring advisor, or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of the Borrower or any of their Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under Section 10.04 and this Section 10.05 shall be paid within twenty (20) Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by the Borrower under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.

Section 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto (other than the replacement of the Administrative Agent pursuant to Article IX above) shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than $1,000,000 (or an integral multiple of $1,000,000 in excess thereof), unless each of the Administrative Agent and the Borrower otherwise consents in writing; *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, (2) in respect of an assignment to any Person in its capacity as (x) trustee or custodian holding assets for the satisfaction

of the obligations of any Lender (or any Affiliate of such Lender) to any counterparty to a reinsurance arrangement or (y) counterparty to a reinsurance arrangement with any Lender (or any Affiliate of such Lender) or (3) in respect of an assignment of all or a portion of the Loans, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within 15 Business Days after having received notice from the assigning Lender of a failure to respond to such request for assignment; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) of all or a portion of the Loans pursuant to Section 10.07(g);

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all documentation and other information reasonably requested by the Administrative Agent or otherwise required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act. Each assignee Lender shall be required to represent in the Assignment and Assumption that it is not a Disqualified Institution or an Affiliate of a Disqualified Institution.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to Holdings, the Borrower or any of its Subsidiaries, (B) to any Affiliate of the Borrower, (C) to a natural person or (D) to any Disqualified Institution.

This Section 10.07(b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07, from and after the date of recordation thereof by the Administrative Agent, specified in each Assignment and Assumption, (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Term Note, the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding written notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower or any Affiliate or Subsidiary of the Borrower or a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (other than clauses (d) and (i) thereof) that directly affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable as though it were a Lender)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 3.01(8) with respect to any payments made by such Lender to its Participant(s).

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(n) Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings. In addition, if any assignment or participation is made to any Disqualified Institution without the Borrower's express prior written consent (which consent shall state expressly that the Borrower acknowledges that the assignee Lender is a Disqualified Institution) in violation of clause (v) of Section 10.07(b), the Borrower may, in addition to any other rights and remedies that it may have against such Disqualified Institution, at its sole expense and effort, upon written notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(o) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

Section 10.08 [Reserved].

Section 10.09 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, members, directors, officers, employees, legal counsel, independent auditors, professionals and other experts or agents, trustees, advisors and representatives, financing sources and existing and prospective investors in any Approved Fund (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided*, *however*, that such Agent or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers) (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided*, *however*, that each Agent and each Lender agrees to seek confidential treatment with respect to any such disclosure, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a Governmental Authority; *provided* that such Agent or such Lender as applicable, agrees (x) that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of any audit or regulatory examination) unless such notification is prohibited by law, rule or regulation and (y) to seek confidential treatment with respect to any such disclosure, (d) to any other party hereto and or any other Secured Party, (e) subject to an agreement containing confidentiality provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or Participant in, or any potential or prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) or prospective Eligible Assignee or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that (i) such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Hedge Bank, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and the Agents, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action on the part of the recipient to access such confidential information and (ii) no such disclosure shall be made to any person that is at such time a Disqualified Lender, (f) for purposes of establishing a "due diligence" defense, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate of the Borrower or (z) is independently developed by the Agents, the Lenders or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09, (i) in order to enforce its respective rights under any Loan Document in any action or proceeding or (j) on a confidential basis to any rating agency.

For purposes of this Section 10.09, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including applicable United States securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

Notwithstanding anything to the contrary provided elsewhere herein, this Section 10.09 shall not limit the activities of any affiliate of the Structuring Advisor; *provided* that Information is not disclosed to directors, officers or employees of such affiliate, other than to (x) compliance or finance personnel for compliance or finance purposes and (y) non-compliance personnel who are directors or officers of, or function in a similar oversight role at, such affiliate as long as Information is not otherwise disclosed to such affiliate or used for the benefit of such affiliate.

Section 10.10 Setoff. Subject to Section 10.19, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent (as directed by the Required Lenders), to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, and the Secured Parties, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent in writing promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.11 [Reserved].

Section 10.12 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. Except as provided in Sections 4.01 and 10.18, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.13 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption, any Loan Document or in any amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.14 Survival of Representations and Warranties. Subject to Section 1.02(9), all representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.16 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL

BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

Section 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and assigns.

Section 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and Agents and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by the Administrative Agent of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent.

Section 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Structuring Advisor, the Arranger and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Agents, the Structuring Advisor, the Arranger and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings 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 Agent, Structuring Advisor, the Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Structuring Advisor, the Arranger nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Structuring Advisor, the Arranger, 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, Holdings and their respective Affiliates, and none of the Agents, the Structuring Advisor, the Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Structuring Advisor, the Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.

(a) The Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such

lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents, (vii) to the extent such Collateral otherwise becomes Excluded Assets and (viii) in the case of (A) the Guarantee of the Obligations by Holdings and (B) the pledge by Holdings of the Equity Interests of the Borrower, in each case, upon the consummation of a Qualifying IPO of the Borrower resulting in Holdings owning, directly or indirectly, no more than 49.99% of the common equity interests of the Borrower. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender; *provided* that, upon request by the Administrative Agent or Collateral Agent (and, in each case, prior to the Administrative Agent and Collateral Agent being required to execute and deliver (or file and/or record) such instruments, documents or agreements or otherwise comply with this sentence), the Borrower shall be required to deliver a certificate to the Administrative Agent and Collateral Agent confirming that such sale or transfer of Collateral is permitted under the Loan Documents (in the case of clause (ii) of this Section 10.24(a)) or such release of a Guarantor is permitted under the Loan Documents (in the case of clause (v) of this Section 10.24(a)), and the Administrative Agent and Collateral Agent shall be permitted to rely upon such certificate without incurring any liability therefor. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than any contingent obligations not then due) have been paid in full and all Commitments have terminated, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Permitted Lien specified in clause (7) of the definition thereof securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4) of Section 7.02(b) in any Collateral, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any such Permitted Lien to be senior to the Liens in favor of the Collateral Agent.

Section 10.25 [Reserved].

Section 10.26 Judgment Currency. If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.27 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all or a portion of such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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

TORRID, LLC, as the Borrower

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

TORRID, INC., as Holdings

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

CORTLAND CAPITAL MARKET SERVICES LLC, as
Administrative Agent and Collateral Agent

By: /s/ Jon Kirschmeier
Name: Jon Kirschmeier
Title: Associate Counsel

[Signature Page to Term Loan Credit Agreement]

GOLDENTREE 2004 TRUST, as a Lender
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Name: Karen Weber
Title: Director

GOLDENTREE INSURANCE FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as a Lender
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Name: Karen Weber
Title: Director

GT NM, L.P., as a Lender
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Name: Karen Weber
Title: Director

LOUSIANA STATE EMPLOYEES' RETIREMENT SYSTEM., as a Lender
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Name: Karen Weber
Title: Director

SAN BERNADINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, as a Lender
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Name: Karen Weber
Title: Director

KKR CREDIT ADVISORS (US) LLC, as Structuring Advisor

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

[Signature Page to Term Loan Credit Agreement]

CORPORATE CAPITAL TRUST II, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

DARBY CREEK LLC, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

DUNLAP FUNDING LLC, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

FS INVESTMENT CORPORATION IV, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

FS KKR CAPITAL CORP, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

JESSELTON CALIFORNIA LEVERED L.P., as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

KLP III CALIFORNIA LEVERED LTD., as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

KKR - NYC CREDIT A CALIFORNIA LEVERED L.P.,
as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

AURORA NATIONAL LIFE ASSURANCE COMPANY,
as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

TACTICAL VALUE SPN - CALIFORNIA LEVERED LP, as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

KKR-UWF CALIFORNIA LEVERED L.P.,
as a Lender

By: /s/ Philip S. Davidson
Name: Philip S. Davidson
Title: Authorized Signatory

RELIANCE STANDARD LIFE INSURANCE COMPANY, as a Lender

By: TCW Asset Management Company LLC
Its: Investment Manager and Attorney-in-Fact

By: /s/ James Bold
Name: James Bold
Title: Managing Director

PHILADELPHIA INDEMNITY INSURANCE COMPANY, as a Lender

By: TCW Asset Management Company LLC
Its: Investment Manager and Attorney-in-Fact

By: /s/ James Bold
Name: James Bold
Title: Managing Director

TCW DLG FUNDING VII 2018-1 LLC, as a Lender

By: TCW DL VII Financing LLC
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ James Bold
Name: James Bold
Title: Managing Director

WEST VIRGINIA DIRECT LENDING LLC, as a Lender

By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ James Bold
Name: James Bold
Title: Managing Director

TCW SKYLINE DLG 2017-1 LLC, as a Lender

By: TCW Skyline Lending, L.P.
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ James Bold
Name: James Bold
Title: Managing Director

TCW BRAZOS DLG 2017-1 LLC, as a Lender

By: TCW Brazos Fund LLC
Its: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ James Bold
Name: James Bold
Title: Managing Director

NJ/TCW DIRECT LENDING LLC, as a Lender

By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ James Bold
Name: James Bold
Title: Managing Director

SPECIALTY LOAN FUND 2016, L.P.,
as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

SPECIALTY LOAN ONTARIO FUND 2016, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

SPECIALTY LOAN FUND 2016-L, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

SLF 2016 INSTITUTIONAL HOLDINGS, L.P., as a Lender
By: HPS Investment Partners, LLC, its Service Provider

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

CST SPECIALTY LOAN FUND, L.P.,
as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

MORENO STREET DIRECT LENDING FUND, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

AXA EQUITABLE LIFE INSURANCE COMPANY, as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

FALCON CREDIT FUND, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

SAFETY NATIONAL CASUALTY CORPORATION, as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

RELIANCE STANDARD LIFE INSURANCE COMPANY, as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

SPECIALTY LOAN FUND - CX - 2, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

CACTUS DIRECT LENDING FUND, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

PRIVATE LOAN OPPORTUNITIES FUND, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

RED CEDAR FUND 2016, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

PACIFIC INDEMNITY COMPANY, as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Managing Director

Exhibit 10.2

AMENDMENT NO. 1 TO TERM LOAN CREDIT AGREEMENT

This AMENDMENT NO. 1 TO TERM LOAN CREDIT AGREEMENT, dated as of September 17, 2020 (this "**Agreement**"), among Torrid Intermediate LLC, a Delaware limited liability company (f/k/a Torrid Inc.) ("**Holdings**"), Torrid LLC, a California limited liability company (the "**Borrower**"), Cortland Capital Market Services LLC, as administrative agent (in such capacity, including any successor thereto, the "**Administrative Agent**"), and each of the Lenders under the Existing Credit Agreement referred to below.

PRELIMINARY STATEMENTS

WHEREAS, reference is made to that certain Term Loan Credit Agreement, dated as of June 14, 2019 (as in effect immediately prior to the effectiveness of this Agreement, the "**Existing Credit Agreement**"; the Existing Credit Agreement as amended by this Agreement, the "**Amended Credit Agreement**"; capitalized terms used but not defined herein having the meaning provided in the Amended Credit Agreement), among Holdings, the Borrower, the Lenders from time to time party thereto, the Administrative Agent and the Collateral Agent;

WHEREAS, the Borrower has requested an amendment to the Existing Credit Agreement pursuant to which certain provisions of the Existing Credit Agreement will be amended as set forth herein; and

WHEREAS, each of the Lenders has agreed to modify the Existing Credit Agreement in the manner described in Section 1 herein.

NOW, **THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendments and Waiver to the Existing Credit Agreement. The Existing Credit Agreement is amended to delete the bold, red stricken text (indicated textually in the same manner as the following example: ~~**stricken text**~~) and to add the bold, blue double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Existing Credit Agreement attached as Exhibit A hereto (in each case without yellow highlighting). In addition, effective on the date hereof, and notwithstanding anything to the contrary in Section 6.01(2) of the Existing Credit Agreement, the Lenders hereby waive the delivery requirement for the financial statements required to be delivered under Section 6.01(2) under the Existing Credit Agreement, with respect to the fiscal quarter ending on August 1, 2020, so long as such financial statements are delivered on or before September 30, 2020.

2. Representations and Warranties. To induce the other parties hereto to enter into this Agreement, the Borrower represents and warrants (on behalf of itself and the other Loan Parties where applicable) to each of the Lenders party hereto, the Administrative Agent and the Collateral Agent that, after giving effect to this Agreement:

(a) Existence; Qualification and Power. The Borrower and each other Loan Party (i) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization, (ii) has all corporate or other organizational power and authority to (x) own or lease its assets and carry on its business as currently conducted and (y) execute, deliver and perform under this Agreement, and (iii) is duly qualified and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification, except in each case referred to in the preceding clauses (i) (other than with respect to Holdings or the Borrower), (ii)(x) and (iii) to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Authorization; No Contravention. The execution, delivery and performance by each of the Loan Parties party to this Agreement have been duly authorized by all necessary corporate or other organizational action, and do not and will not (i) contravene the terms of its Organizational Documents or any shareholders' agreement, unanimous shareholders' agreement or sole shareholder declaration by which such Loan Party is bound, (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries of Holdings (including the Borrower) (other than as permitted by Section 7.01 of the Amended Credit Agreement) under (x) any Contractual Obligation in excess of the Threshold Amount to which such Loan Party is a party or affecting such Loan Party or any of the properties of such Loan Party or any Subsidiary or (y) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or any Subsidiary or its property is subject or (iii) violate any applicable Law, except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (ii) and (iii), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, each of the Loan Parties party to this Agreement, except for (i) such approvals, consents, exemptions, authorizations, actions, notices or filings that have been duly obtained, taken, given or made and are in full force and effect and (ii) such approvals, consents, exemptions, authorizations, or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Execution and Delivery; Binding Effect. This Agreement has been duly executed and delivered by the Loan Parties party hereto. This Agreement constitutes will constitute, a legal, valid and binding obligation of each Loan Party that is party hereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

3. Conditions Precedent. This Agreement and the amendments set forth in Section 1 of this Agreement (except for the waiver set forth in the second sentence of Section 1 of this Agreement, which shall be effective upon the satisfaction of only the following condition precedent in clause (a) of this Section 3) shall only become effective upon the satisfaction (or waiver) of the following conditions precedent (the date of satisfaction of such conditions being referred to herein as the "**Amendment No. 1 Effective Date**"), which shall be no later than September 23, 2020:

(a) The Administrative Agent (or its counsel) shall have received from (i) the Administrative Agent, (ii) each of the Lenders, (iii) Holdings, (iv) the Borrower and (v) each other Loan Party, (x) a counterpart of this Agreement, signed on behalf of such party or (y) written evidence (which may include a telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) All reasonable costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of counsel for the Administrative Agent and Milbank LLP) of the Administrative Agent and the Lenders in connection with this Agreement and the transactions contemplated hereby shall have been paid, to the extent invoiced.

(c) The Borrower shall have delivered to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of the fiscal month ended August 31, 2020, and the related consolidated statements of income or operations, and cash flows for such fiscal month and for the portion of the fiscal year then ended and (ii) a "same store sales" report.

(d) On or prior to the Amendment No. 1 Effective Date, the Borrower shall have voluntarily prepaid to the Administrative Agent, for the ratable account of each Lender, the Closing Date Term Loans in an aggregate principal amount equal to $35,000,000 (the "**Amendment No. 1** Prepayment Amount"), together with an amount equal to one and one-half percent (1.50%) of such aggregate principal amount of Closing Date Term Loans so prepaid (i.e., $525,000); it being understood and agreed that, notwithstanding anything set forth in the Existing Credit Agreement to the contrary, (i) no Prepayment Premium shall otherwise be required in respect of the Amendment No. 1 Prepayment Amount and (ii) the Amendment No. 1 Prepayment Amount shall be applied to reduce the payment of Closing Date Term Loans required to be repaid on the Maturity Date pursuant to Section 2.07(d) of the Existing Credit Agreement.

(e) The representations and warranties of each Loan Party set forth in Section 2, Article V of the Existing Credit Agreement and each other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) on and as of the date of this Agreement with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) as of such earlier date.

(f) At the time of and immediately after giving effect to this Agreement, no Default or Event of Default shall exist or would result from this Agreement.

Without limiting the generality of the provisions of Section 10.01(1) of the Amended Credit Agreement, for purposes of determining compliance with the condition specified in this Section 3, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, this Agreement or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Amendment No. 1 Effective Date specifying its objection thereto.

4. Confirmation. The Borrower (on behalf of each other Loan Party) hereby acknowledges its receipt of a copy of this Agreement and its review of the terms and conditions hereof and consents to the terms and conditions of this Agreement and the transactions contemplated hereby. The Borrower (on behalf of each other Loan Party) hereby (a) affirms and confirms its obligations under the Existing Credit Agreement and Loan Documents to which it is a party, (b) agrees that (i) each Loan Document to which it is a party shall continue to be in full force and effect and (ii) all guarantees, pledges, grants and other undertakings thereunder shall continue to be in full force and effect and shall accrue to the benefit of the Secured Parties and (c) agrees that the Existing Credit Agreement as modified hereby is the "Credit Agreement" under and for all purposes of the Loan Documents.

5. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except in accordance with the Amended Credit Agreement. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

6. Loan Document. This Agreement shall constitute a Loan Document for all purposes of the Amended Credit Agreement and the other Loan Documents.

7. Governing Law, Etc. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. SECTIONS 10.15, 10.16 AND 10.17 OF THE AMENDED CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.**

8. Administrative Agent. The Administrative Agent shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Agreement. Each of the Lenders party hereto hereby (i) authorizes and directs the Administrative Agent to execute and deliver this Agreement, and (ii) acknowledges and agrees that the foregoing directed action constitutes a direction from the Lenders under Article IX of the Amended Credit Agreement, including, without limitation, Section 9.01 and Section 9.03 of the Amended Credit Agreement. Holdings, the Borrower and the Lenders party hereto expressly agree and confirm that the Administrative Agent's right to indemnification, as set forth in Sections 9.08 and 10.05 of the Amended Credit Agreement shall apply with respect to any and all losses, claims, liabilities costs and expenses that the Administrative Agent suffers, incurs or is threatened with relating to actions taken or omitted by the Administrative Agent (in accordance with the Amended Credit Agreement) in connection with this Agreement and the other documents contemplated hereby. The Borrower hereby agrees to pay on demand all costs and expenses in accordance with Section 10.04 of the Amended Credit Agreement, in each case, incurred in connection with the preparation, negotiation and execution of this Agreement and all related documents. Any consents, agreements, actions or omissions required, given or made (as applicable) by Administrative Agent hereunder shall be deemed at the direction of all of the Lenders. The undersigned Lenders hereby represent and warrant that they represent 100% of the Lenders under the Amended Credit Agreement.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

10. Release. In consideration of the willingness of the Administrative Agent and the Lenders to enter into this Agreement, the Borrower hereby fully, finally unconditionally and irrevocably releases and forever discharges the Administrative Agent and the Lenders and the Administrative Agent's and the Lenders' respective predecessors, successors, assigns, officers, managers, directors, employees, agents, attorneys, representatives, and Affiliates (hereinafter all of the above collectively referred to as the "**Released Parties**"), from any and all claims, counterclaims, demands, damages, debts, suits, liabilities, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which the Borrower, on or prior to the date hereof, may have or claim to have against any of the Released Parties in any way related to or connected with this Agreement, the Credit Agreement, the other Loan Documents and the transactions governed thereby, in each case related to claims otherwise arising on or prior to the date hereof.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

CORTLAND CAPITAL MARKET SERVICES LLC, as Administrative Agent

By: /s/ Jon Kirschmeier
Name: Jon Kirschmeier
Title: Associate Counsel

TORRID INTERMEDIATE LLC,
as Holdings

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TORRID LLC,
as the Borrower

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TORRID INC.
TORRID ADMINISTRATION, INC.
TORRID MERCHANDISING, INC.
TORRID OHIO, LLC
each as a Guarantor

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TCW DL VII Financing LLC, as a Lender
By: TCW Asset Management Company LLC, its Collateral Manager

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

West Virginia Direct Lending LLC, as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

TCW Skyline Lending L.P., as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

NJ/TCW Direct Lending LLC, as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

TCW Brazos Fund LLC, as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

Reliance Standard Life Insurance Company, as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor and Attorney-in-Fact

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

Philadelphia Indemnity Insurance Company, as a Lender
By: TCW Asset Management Company LLC, its Investment Advisor and Attorney-in-Fact

By: /s/ Suzanne Grosso
Name: Suzanne Grosso
Title: Managing Director

DARBY CREEK LLC, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

DUNLAP FUNDING LLC, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

AMBLER FUNDING LLC, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

AURORA NATIONAL LIFE ASSURANCE COMPANY, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

FS KKR CAPITAL CORP., as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

FS KKR CAPITAL CORP. II, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

FS KKR MM CLO 1 LLC, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

JESSELTON CALIFORNIA LEVERED L.P., as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

KKR - NYC CREDIT A CALIFORNIA LEVERED L.P., as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

KKR-UWF CALIFORNIA LEVERED L.P., as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

KLP III CALIFORNIA LEVERED LTD., as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

TACTICAL VALUE SPN – CALIFORNIA LEVERED LP, as a Lender

By: /s/ Jessica Woolf
Name: Jessica Woolf
Title: Authorized Signatory

GN3 SIP Limited
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

GoldenTree Insurance Fund Series Interests of the SALI Multi-Series Fund, L.P.
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

Louisiana State Employees Retirement System
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

GT NM, L.P.
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

GTAM 110 Designated Activity Company
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

GoldenTree 2004 Trust
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

High Yield and Bank Loan Series Trust
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

San Bernardino County Employees Retirement Association
By: GoldenTree Asset Management, LP

By: /s/ Karen Weber
Karen Weber
Director, Operations

CACTUS DIRECT LENDING FUND, L.P.,
as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

FALCON CREDIT FUND, L.P., as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

MORENO STREET DIRECT LENDING FUND, L.P., as
a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

PACIFIC INDEMNITY COMPANY, as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

PRIVATE LOAN OPPORTUNITIES FUND, L.P.,
as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

RELIANCE STANDARD LIFE INSURANCE COMPANY, as a Lender
By: HPS Investment Partners, LLC, as
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SAFETY NATIONAL CASUALTY CORPORATION, as a Lender
By: HPS Investment Partners, LLC, as Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SPECIALTY LOAN FUND 2016, L.P., as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

CST SPECIALTY HOLDINGS L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

EQUITABLE FINANCIAL LIFE INSURANCE COMPANY, as a Lender
By: HPS Investment Partners, LLC, as Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

RED CEDAR HOLDINGS, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

RED CEDAR HOLDINGS, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SLF 2016 INSTITUTIONAL HOLDINGS II, L.P., as a Lender
By: HPS Investment Partners, LLC, its Service Provider

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SLF 2016 INSTITUTIONAL HOLDINGS III, L.P., as a Lender
By: HPS Investment Partners, LLC, its Service Provider

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SLF 2016-L HOLDINGS, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SLF CX-2 HOLDINGS B, L.P., as a Lender
By: HPS Investment Partners, LLC, its Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SLF CX-2 HOLDINGS, L.P., as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

SPECIALTY LOAN ONTARIO FUND 2016, L.P.,
as a Lender
By: HPS Investment Partners, LLC, its
Investment Manager

By: /s/ Vali Shokrgozar
Name: Vali Shokrgozar
Title: Authorized Signatory

EXHIBIT A

Credit Agreement

[See attached.]

~~EXECUTION VERSION~~

MARKED TO SHOW CHANGES THROUGH AMENDMENT NO. 1 DATED AS OF SEPTEMBER 17, 2020

$260,000,000

TERM LOAN CREDIT AGREEMENT

Dated as of June 14, 2019

among

TORRID ~~INC.,~~ **INTERMEDIATE LLC (f/k/a Torrid Inc.),**
as Holdings,

TORRID LLC,
as the Borrower,

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and Collateral Agent,

and

THE LENDERS PARTY HERETO

KKR CREDIT ADVISORS (US) LLC,

as Structuring Advisor

KKR CAPITAL MARKETS LLC,

as Sole Lead Arranger and Bookrunner

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TERM LOAN CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT (this "**Agreement**") is entered into as of June 14, 2019, by and among Torrid ~~Inc.~~**Intermediate LLC**, a Delaware ~~corporation~~**limited liability company (f/k/a Torrid Inc.)** ("**Holdings**"), Torrid LLC, a California limited liability company and direct subsidiary of Holdings (the "**Borrower**"), KKR Credit Advisors (US) LLC, as Structuring Advisor, Cortland Capital Market Services LLC, as administrative agent (in such capacity, including any successor thereto, the "**Administrative Agent**") and as collateral agent (in such capacity, including any successor thereto, the "**Collateral Agent**") under the Loan Documents, and each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**").

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders make available on the Closing Date to the Borrower up to $260,000,000 of Closing Date Term Loans, on the terms and conditions set forth herein, the proceeds of which will be used for the purposes set forth in Section 6.14.

The proceeds of the Closing Date Term Loans, together with borrowings under the ABL Facility, will be used on the Closing Date (i) to consummate the Closing Date Refinancing, (ii) to pay the Transaction Expenses and (iii) to the extent any such proceeds remain after the foregoing uses, for general corporate purposes not prohibited by the terms of this Agreement.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

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

ARTICLE I

Definitions and Accounting Terms

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

"**2018 Audited Financial Statements** " means the audited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of the fiscal year ended February 2, 2019, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year.

"**2019 ABL Amendment**" means that certain First Amendment to the ABL Credit Agreement, dated as of the date hereof, by and among the Borrower, Holdings, the ABL Facility Administrative Agent and the lenders party thereto.

"**ABL Commitments**" means "Commitments" as defined in the ABL Credit Agreement.

"**ABL Credit Agreement**" means the ABL Credit Agreement dated as of October 23, 2017, as amended by the 2019 ABL Amendment, among Holdings, the Borrower, the ABL Facility Administrative Agent and the several banks and other financial institutions from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time, in each case to the extent permitted hereunder and under the ABL Intercreditor Agreement and any Refinancing Indebtedness thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Credit Agreement) in each case to the extent permitted hereunder.

"**ABL Cure Amount**" means "Cure Amount" as defined in the ABL Credit Agreement.

"**ABL Cure Right**" means "Cure Right" as defined in the ABL Credit Agreement.

"**ABL Event of Default**" means "Event of Default" as defined in the ABL Credit Agreement.

"**ABL Facility**" means the asset-based credit facility governed by the ABL Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans, notes or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof), in each case to the extent permitted or not restricted by this Agreement.

"**ABL Facility Administrative Agent**" means Bank of America, N.A. in its capacity as administrative agent under the ABL Credit Agreement or any successor agent under the ABL Loan Documents.

"**ABL Financial Covenant**" means the covenant set forth in Section 7.15 of the ABL Credit Agreement.

"**ABL Intercreditor Agreement**" means the ABL Intercreditor Agreement substantially in the form of Exhibit G-1 among the Collateral Agent, Bank of America, N.A., as collateral agent under the ABL Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**ABL Lenders**" means the "Lenders" as defined in the ABL Credit Agreement.

"**ABL Loan Documents**" means, collectively, (i) the ABL Credit Agreement and (ii) any security documents, intercreditor agreements (including the ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the ABL Credit Agreement or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Refinancing Indebtedness under the ABL Credit Agreement (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Loan Document).

"**ABL Loans**" means "Loans" as defined in the ABL Credit Agreement.

"**ABL Obligations**" means "Obligations" as defined in the ABL Credit Agreement.

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

"**Acceptable Discount**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acceptable Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Acceptance and Prepayment Notice**" means a notice of the Borrower's acceptance of the Acceptable Discount in substantially the form of Exhibit M.

"**Acceptance Date**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Subsidiary of such specified Person and not incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

~~"**Additional Lender**" means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (b) Replacement Loans pursuant to Section 10.01; *provided* that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed), in each case solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender.~~

"**Adjusted EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h) and (l)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees and costs of surety bonds in connection with financing activities; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, provincial, territorial, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations), and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash expenses, charges, expenses, losses or items (including any write-offs or write-downs) reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period) **(*provided, further*, that,** to the extent that any **amounts in respect of any inventory-related charges, write-offs or write-downs which are added back pursuant to this clause (d) exceed $7,500,000 in the aggregate in such period, such excess, when combined with all other Combined Adjustment Amounts for such period, shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis)**; *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Subsidiary deducted (and not added back) in such period to Consolidated Net Income, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreement or otherwise to the extent otherwise permitted under Section 7.06 and (ii) the amount of payments made to option holders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to shareholders of such Person or its Parent Companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

(g) the amount of loss or discount on sale of Securitization Assets in connection with a Qualified Securitization Facility; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Adjusted EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Adjusted EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interest of such Person (other than Disqualified Stock); *plus*

(j) [reserved]; *plus*

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus*

(l) (I) pro forma adjustments, including pro forma "run rate" cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to acquisitions, dispositions and other Specified Transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within six fiscal quarters after the date of consummation of such acquisition, disposition or other Specified Transaction or the initiation of such restructuring initiative, cost savings initiative or other initiatives and (II) pro forma "run rate" cost savings, operating expense reductions and synergies (in each case, net of amounts actually realized) related to the Transactions that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within six fiscal quarters after the Closing Date (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken); *provided* that amounts added back pursuant to this clause (l) ~~and together with any similar adjustments made in accordance with Section 1.07(3),~~ when combined with ~~adjustments pursuant to clause (n) below and clause (1) of the definition of "Consolidated Net Income"~~ **all other Combined Adjustment Amounts for such period,** shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis; *provided*, *further*, that such cap shall not apply to adjustments made in accordance with Regulation S-X; *provided*, *further*, in the case of the forgoing clauses (l)(I), such adjustments shall be permitted only to the extent they are supported by a certificate executed by a Financial Officer of the Borrower and delivered to the Administrative Agent; *plus*

(m) any payments in the nature of compensation or expense reimbursement made to independent board members to the extent customary for similarly situated businesses; *plus*

(n) costs, charges, reserves and expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other synergies and similar initiatives and business optimization and other restructuring and integration charges; *provided* that amounts added back pursuant to this clause (n), when combined with ~~adjustments pursuant to clause (l) above (together with any similar adjustments made in accordance with Section 1.07(3)), and clause (1) of the definition of "Consolidated Net Income"~~ **all other Combined Adjustment Amounts for such period,** shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis; *plus*

(o) adjustments and addbacks reflected in the financial model provided to the Structuring Advisor on February 27, 2019 (together with updates and modifications thereto reasonably agreed to by the Structuring Advisor prior to the Closing Date; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Adjusted EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Adjusted EBITDA in accordance with this definition),

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned subsidiary added (and not deducted in such period from Consolidated Net Income), and

(c) any net gain from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period.

For the avoidance of doubt, and notwithstanding anything in this Agreement to the contrary, no adjustments or addbacks in respect of lost revenue shall be included in determining "Adjusted EBITDA" for any purpose in any period; *provided* that the foregoing shall not prohibit the inclusion of **amounts of proceeds received or receivable from business interruption insurance in determining "Consolidated Net Income" as described in the last paragraph** of the definition of "Consolidated Net Income"**.**

Adjusted EBITDA of the Borrower and its Subsidiaries will be deemed to equal (i) $32,900,000 for the fiscal quarter ended May 5, 2018, (ii) $29,000,000 for the fiscal quarter ended August 4, 2018, (iii) $22,900,000 for the fiscal quarter ended November 3, 2018 and (iv) $20,200,000 for the fiscal quarter ended February 2, 2019, in each case and, without duplication, adjusted to reflect any pro forma adjustments with respect to any relevant Specified Transaction as are appropriate and consistent with the pro forma adjustment provisions set forth in Section 1.07, in each case, occurring or identified after the Closing Date and not otherwise included in the calculation of the foregoing amounts.

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

"**Administrative Agent Fee Letter**" means that certain Administrative Agent Fee Letter, dated as of the date hereof, by and among the Administrative Agent, the Collateral Agent and the Borrower.

"**Administrative Agent's Account**" means the account from time to time designated by the Administrative Agent as the account to which payments hereunder are to be directed. "**Administrative Questionnaire**" means, with respect to each Lender, an administrative questionnaire in the form provided by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Affiliate Transaction**" has the meaning specified in Section 7.06.

"**After Year-End Payment**" has the mean specified in Section 2.05(2).

"**Agent Indemnitees**" shall have the meaning provided for in Section 10.05

"**Agent Parties**" has the meaning specified in Section 10.02(4).

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

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

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

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

"**Agreement Currency**" has the meaning specified in Section 10.26.

"**AHYDO Payment**" means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is required to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Code Section 163(i).

"**All-In Yield**" means, with respect to any term loan facility or other term loans, as of any date of determination, the sum of (i) the higher of (A) the LIBOR Rate, on such date for a deposit in Dollars with a maturity of three months and (B) the LIBOR Rate "floor," if any, with respect thereto as of such date, (ii) the Applicable Rate (or other applicable margin) as of such date for LIBOR Rate Loans (or other loans that accrue interest by reference to a similar reference rate) and (iii) the amount of original issue discount and upfront fees thereon (converted to yield assuming a four-year average life and without any present value discount), but excluding the effect of any arrangement, structuring, syndication or similar fees payable in connection therewith that are not shared with all lenders or holders of such term loan facility or other term loans; *provided* that the amounts set forth in clauses (i) and (ii) above for any term loans that are not incurred under this Agreement shall be based on the stated interest rate basis for such term loans.

"**Anti-Corruption Laws**" means the U.S. Foreign Corrupt Practices Act of 1977, including the regulations thereunder and as amended from time to time, the UK Bribery Act of 2010, and any other similar applicable law or regulation related to corruption or bribery.

"**Anti-Corruption Prohibited Activity**" has the meaning set forth in Section 5.21.

"**Anti-Money Laundering Laws**" means laws, regulations, rules or guidelines relating to the prevention of money laundering, including financing recordkeeping and reporting requirements, such as the USA PATRIOT Act, the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, and the U.S. Money Laundering Control Act of 1986, as amended.

"**Applicable Discount**" has the meaning specified in Section 2.05(1)(e)(C)(2).

"**Applicable Intercreditor Agreement**" means (a) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that (i) are intended to rank equal in priority to the Liens on the ABL Priority Collateral securing the ABL Obligations and (ii) are intended to rank junior in priority to the Liens on the Term Priority Collateral securing the Obligations, the ABL Intercreditor Agreement, (b) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank equal in priority to the Liens on the Collateral securing the Obligations (but without regard to control of remedies), each of the ABL Intercreditor Agreement and the Term Intercreditor Agreement, (c) to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement), the Term Intercreditor Agreement and the ABL Intercreditor Agreement and (d) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank junior in priority to the Liens securing the Obligations and the Junior Priority Debt Obligations, a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Liens on the Collateral securing the Obligations and the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement).

"**Applicable Rate**" means a percentage per annum equal to, with respect to Closing Date Term Loans, (i) until delivery of financial statements and a related Compliance Certificate for the first full fiscal quarter commencing on or after the Closing Date pursuant to Sections 6.01(1) or 6.01(2), as applicable, (A) for LIBOR Rate Loans, 6.75% and (B) for Base Rate Loans, 5.75% and (ii) thereafter, the percentages per annum set forth in the table below, based upon the Total Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(1):

Total Net Leverage Ratio	**Base Rate Loans**	**LIBOR Rate Loans**
> 3.00:1.00	6.00%	7.00%
≤ 3.00:1.00 ~~and > 2.00:1.00~~	5.75%	6.75%
~~≤ 2.00:1.00~~	~~5.50%~~	~~6.50%~~

Any increase or decrease in the Applicable Rate resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(1).

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Total Net Leverage Ratio set forth in any Compliance Certificate delivered to the Administrative Agent is inaccurate for any reason and the result thereof is that the Lenders received interest or fees for any period based on an Applicable Rate that is less than that which would have been applicable had the Total Net Leverage Ratio been accurately determined, then, for all purposes of this Agreement, the "**Applicable Rate**" for any day occurring within the period covered by such Compliance Certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Total Net Leverage Ratio for such period, and any shortfall in the interest theretofore paid by the Borrower for the relevant period pursuant to Section 2.08

as a result of the miscalculation of the Total Net Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of Section 2.08 at the time the interest for such period was required to be pursuant to such Section (and shall remain due and payable until paid in full), in accordance with the terms of this Agreement); *provided* that, notwithstanding the foregoing, so long as an Event of Default described in Section 8.01(6) has not occurred with respect to the Borrower, such shortfall shall be due and payable five (5) Business Days following the determination described above.

In addition, at any time during which the Borrower shall have failed to deliver financial statements pursuant to Sections 6.01(1) or 6.01(2), as applicable, and a related Compliance Certificate, the "**Applicable Rate**" for any day occurring within the period covered by such Compliance Certificate shall be deemed to be the Applicable Rate for the immediately preceding period until such Compliance Certificate is delivered, at which point any increase or decrease in the Applicable Rate resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date such Compliance Certificate is delivered.

Notwithstanding the foregoing, the Applicable Rate with respect to any Term Loans (other than Closing Date Term Loans), shall be as specified in the applicable Extension Amendment~~, Refinancing Amendment or amendment in respect of Replacement Loans~~.

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

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

"**Arranger**" means KKR Capital Markets LLC, in its capacity as lead arranger under this Agreement.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer, license, lease, assignment or other disposition (including sale-leaseback transactions), whether direct or indirect or in a single transaction or a series of related transactions of property or assets of the Borrower or any Subsidiary (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Subsidiaries issued in compliance with Section 7.02 and directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Subsidiary (other than to the Borrower or another Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course, (iii) [reserved], (iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and (v) [reserved];

(b) the disposition of any assets by the Borrower or any Subsidiary in a manner permitted pursuant to Section 7.03;

(c) any disposition in connection with the making of any a Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or an acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Subsidiary with an aggregate fair market value of less than (i) $1,000,000 for any individual transaction or series of related transactions and (ii) $2,000,000 for all such transactions in any fiscal year;

(e) any disposition of property or assets or issuance of securities by a Subsidiary to the Borrower or by the Borrower or a Subsidiary to a Subsidiary to the extent permitted under this Agreement;

(f) [reserved];

(g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

(h) [reserved];

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited hereunder;

(j) dispositions of Securitization Assets in connection with any Qualified Securitization Facility or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) [reserved];

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof, in each case in the ordinary course of business or consistent with industry practice;

(m) the licensing or sublicensing of IP Rights or other general intangibles in the ordinary course of business; *provided* that such license or sublicense shall be on a non-exclusive basis and shall be consummated with Persons that do not constitute Affiliates of Holdings or any of its Subsidiaries, otherwise such license or sublicense shall constitute an Asset Sale;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary put, drag or tag arrangements (or other provisions with similar effect) between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse or abandonment of IP Rights, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder; and

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property.

"**Assignee Group**" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

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

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

"**Auction Agent** " means (a) the Administrative Agent or any of its Affiliates (unless the Administrative Agent, in its sole discretion, declines to act in such capacity hereunder) or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(1)(e); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided further* that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

"**Available Amount**" means, at any time (the "**Available Amount Reference Time**"), an amount (which shall not be less than zero) equal to the sum of:

(1) $10,000,000; *plus*

(2) the Retained Excess Cash Flow Amount; *plus*

(3) the amount of any Net Proceeds from any Permitted Equity Issuance of Holdings or any Parent Company thereof to the extent contributed to the Borrower as Qualified Equity Interests and the fair market value of any capital contributions made in cash, Cash Equivalents and other property, in each case, to the extent Not Otherwise Applied (and excluding, the amount of any (w) ABL Cure Amount, (x) Cure Amount and (y) any non-cash capital contributions in excess of $1,000,000)) in each case during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; *plus*

(4) (i) the cash proceeds of any Indebtedness of the Borrower and any of its Subsidiaries issued after the Closing Date (other than Disqualified Stock or Indebtedness issued to the Borrower or any of its Subsidiaries) which has been converted into or exchanged for Capital Stock of the Borrower, any Subsidiary or any Parent Company that does not constitute Disqualified Stock during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; *plus*

(5) the Net Proceeds received by the Borrower or any Subsidiary from any Permitted Investments plus returns, profits, distributions and similar amounts received in cash or Cash Equivalents (and non-cash returns, profits, distributions and similar amounts in an amount not to exceed $1,000,000 during the period from the Business Day immediately following the Closing Date through and including the Available Amount Reference Time) by the Borrower and its Subsidiaries from Permitted Investments, in each case, not to exceed the original amount of such Investment; *plus*

(6) the aggregate amount of remaining Declined Proceeds during the period from the Business Day immediately following the Closing Date through and including the Available Amount Reference Time, so long as such Declined Proceeds have first been offered to non-declining Lenders as set forth Section 2.05(2)(g); *plus*

(7) [reserved]; *minus*

(8) the aggregate amount of Restricted Payments made with the Available Amount pursuant to clause (10)(B) of Section 7.05(b) (without duplication of clause (5) above, net of any return of capital in respect of any Investments or deemed reduction in the amount of such Investment, including upon sale, transfer, lease or other disposition of any such Investments and, in each case, not to exceed the original amount of such Investment (without giving effect to the last sentence of the definition thereof), during the period commencing on the Closing Date through and including the Available Amount Reference Time (and, for purposes of this clause (8), without taking account of the intended usage of the Available Amount at such Available Amount Reference Time).

"**Average ABL Amount**" means, for purposes of determining the outstanding amount of the ABL Facility as of any applicable date of determination, such outstanding amount shall be the annual average daily amount of Loans (as defined in the ABL Credit Agreement) of the Borrower and its Subsidiaries thereunder outstanding during the applicable Test Period; *provided* that, to the extent any Test Period includes periods ending prior to the Closing Date, with respect to such periods, Consolidated Total Debt and Consolidated First Lien Debt shall be calculated based on the annual average daily amount of Loans (as defined in the ABL Credit Agreement) outstanding under the ABL Credit Agreement for the applicable portion of the Test Period that occurred prior to the Closing Date~~.~~**; *provided*, *further*, that solely for purposes of determining compliance with the Financial Maintenance Covenant set forth in Section 7.10 (and not for any other purpose under this**

Agreement), to the extent any Test Period includes the fiscal quarters ended May 1, 2020 or August 1, 2020, or ending October 31, 2020, the average daily amount of Loans (as defined in the ABL Credit Agreement) of the Borrower and its Subsidiaries thereunder outstanding for the entirety of such fiscal quarters shall be deemed to be $0 for purposes of determining the Average ABL Amount.

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

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

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

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its "prime rate"; (b) the Federal Funds Rate for such day, *plus* 0.50%; and (c) the LIBOR Rate for a one month interest period as determined on such day, *plus* 1.00%. The "prime rate" is a rate of interest last quoted by *The Wall Street Journal* as the "prime rate" in the U.S. or, if *The Wall Street Journal* ceases to publish for any reason such rate of interest, "prime rate" is the highest per annum interest published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate released by the Federal Reserve Board (as reasonably determined by the Administrative Agent and the Borrower). Any change in Wall Street Journal's prime rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

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

"**Basket**" means any amount, threshold or other value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

"**Board of Directors**" means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of the Borrower.

"**Borrower**" has the meaning specified in the introductory paragraph to this Agreement and upon the consummation of any transaction permitted by Section 7.03(4), the Successor Borrower.

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

"**Borrower Offer of Specified Discount Prepayment**" means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

"**Borrower Parties**" means the collective reference to Holdings, the Borrower and each Subsidiary of the Borrower and "**Borrower Party**" means any of them.

"**Borrower Solicitation of Discount Range Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(C).

"**Borrower Solicitation of Discounted Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(D).

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

"**Business Day**" means any day that is not a Legal Holiday and, when used in connection with Base Rate Loans or LIBOR Rate Loans or otherwise in respect of Obligations of any Loan Party, the term "Business Day" shall also exclude any day on which commercial banks in the State of New York are authorized or required by law to remain closed; *provided* that when used in connection with any LIBOR Rate Loans, the term "**Business Day**" shall also exclude any day on which the banks are not open for dealings in Dollar deposits in the London interbank market.

"**Canadian Dollar**" and "**C$**" mean lawful money of Canada.

"**Canadian Loan Party**" means any Loan Party incorporated or otherwise organized under the laws of Canada or any province or territory thereof.

"**Canadian Subsidiary**" means any Subsidiary incorporated or otherwise organized under the laws of Canada or any province or territory thereof.

"**CapEx Financial Covenant**" has the meaning specified in Section 7.10(2).

"**CapEx Threshold Amount**" has the meaning specified in Section 7.10(2).

"**Capital Expenditures**" means, with respect to any Person for any period, all expenditures paid in cash, in each case that are (or should be) set forth as capital expenditures in a consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP; *provided* that "Capital Expenditures" shall not include (a) any additions, replacements, restorations or substitutions to property, plant and equipment and other capital expenditures made with (i) any proceeds from dispositions of fixtures, furniture or equipment that (x) do not constitute Asset Sales or (y) are applied in accordance with Section 2.05(2)(b)(ii), (ii) proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Loan Parties or (iii) the cash proceeds of any Equity Interests issued or capital contributions in cash received by any Loan Party or any Subsidiary that is applied to any such capital expenditures contemporaneously with the receipt of such cash amounts by any such Loan Party or Subsidiary, (b) any expenditures that are (i) accounted for as capital expenditures of such person and that actually are paid for by a third party (excluding Holdings, the Borrower or any Subsidiary thereof) and for which neither Holdings, the Borrower nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period) or (ii) financed with tenant improvement allowances (or similar real estate incentive programs), or (c) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business; *provided* that the aggregate amount excluded from "Capital Expenditures" in any four fiscal quarter period under this clause (c) shall not exceed $500,000.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

(2) in the case of a ULC, shares or other equity interests in the capital of such ULC;

(3) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(4) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(5) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

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

"**Capitalized Software Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Subsidiaries.

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

"**Cash Equivalents**" means:

(1) Dollars;

(2) Canadian Dollars;

(3) local currencies held by the Borrower or any Subsidiary from time to time in the ordinary course of business or consistent with industry practice;

(4) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(5) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any domestic or foreign commercial bank having capital and surplus of not less than $625,000,000 million in the case of U.S. banks and $125,000,000 million in the case of non-U.S. banks;

(6) repurchase obligations for underlying securities of the types described in clauses

(4) and (5) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (5) above;

(7) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of acquisition thereof;

(8) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency);

(9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any of the foregoing or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof;

(10) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 24 months or less from the date of acquisition;

(11) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(12) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency); and

(13) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (12) above.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

"**Cash Management Agreement** " means any agreement entered into from time to time by Holdings, the Borrower or any Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"**Cash Management Bank**" means any Person that is an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of an ABL Facility Administrative Agent or an ABL Lender at the time it entered into a Cash Management Agreement, whether or not such Person subsequently ceases to be an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of an ABL Facility Administrative Agent or an ABL Lender.

"**Cash Management Obligations**" means obligations owed by Holdings, the Borrower or any Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

"**Cash Management Services**" means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

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

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Code in which stock is owned directly or indirectly within the meaning of Section 958(a) of the Code by one or more United States shareholders within the meaning of 951(b) of the Code that is a Loan Party or a direct or indirect owner of a Loan Party.

"**Change in Law**" means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111 203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

"**Change of Control**" means the occurrence of any of the following after the Closing Date:

(1) at any time prior to the consummation of a Qualifying IPO after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or any Parent Company; or

(2) at any time following the consummation of a Qualifying IPO after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act) of Equity Interests of the Borrower or such Parent Company representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or such Parent Company, as applicable, and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower or such Parent Company, as applicable, beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

(3) [reserved]; or

(4) Holdings shall cease to be the registered owner of 100% of the Equity Interests of the Borrower unless in connection with the consummation of a Qualifying IPO by the Borrower;

unless, in the case of clause (1) or (2) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Borrower or any Parent Company.

"**Claim**" means any actions, suits or written demands or claims.

"**Class**" means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., "fungibility")) and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

"**Closing Date**" means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, and the Closing Date Term Loans are made to the Borrower pursuant to Section 2.01, which date was June 14, 2019.

"**Closing Date Refinancing**" means (i) the redemption and/or repayment (or otherwise defeasance) of the Secured Notes in their entirety, (ii) the termination and/or release of all guarantees and security granted in connection therewith and (iii) the termination and release in full of the Hot Topic Guarantee, in each case other than contingent indemnification obligations as to which no claim has been asserted.

"**Closing Date Term Loan Commitment**" means, as to each Term Lender, its obligation to make a Closing Date Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Lender's name on Schedule 2.01 under the caption "Closing Date Term Loan Commitment" or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Section ~~2.15,~~ 2.16 ~~or 10.01~~). The initial aggregate amount of the Closing Date Term Loan Commitments is $260,000,000.

"**Closing Date Term Loans**" means the Term Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

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

"**Collateral**" means all the "Collateral" (or equivalent term of each of the foregoing) as defined in any Collateral Document and the Mortgaged Properties, if any.

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

"**Collateral and Guarantee Requirement**" means, at any time, the requirement that:

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(1)(c) or (b) pursuant to Section 6.11 or 6.13 at such time required by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) prior to the consummation of a Qualifying IPO of the Borrower, Holdings (or any successor thereto), (b) each Domestic Subsidiary of the Borrower**, each Material Subsidiary** or a Material Foreign Subsidiary (in each case, other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(1) hereto and (c) any Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) ~~any Credit Agreement Refinancing Indebtedness, Refinancing Loans and/or~~ the ABL Facility (the Persons in the preceding clauses (a) through (c) collectively, the "**Guarantors**");

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest in favor of the Collateral Agent for the benefit of the Secured Parties with the priority set forth in the Applicable Intercreditor Agreement, subject only to Liens permitted by Section 7.01, in

(a) prior to the consummation of a Qualifying IPO of the Borrower, all the Equity Interests of the Borrower,

(b) all Equity Interests of each Domestic Subsidiary, Canadian Subsidiary and other Foreign Subsidiary, in each case, to the extent not constituting a CFC or Foreign Subsidiary Holding Company, that is directly owned by the Borrower or any Subsidiary Guarantor; and

(c) 65% of the Voting Stock of each CFC and Foreign Subsidiary Holding Company and 100% of all other Equity Interests of each CFC and Foreign Subsidiary Holding Company;

(4) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a security interest in favor of the Collateral Agent for the benefit of the Secured Parties in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts, other than Securitization Assets), inventory, equipment, investment property, contract rights, applications and registrations of IP Rights filed in the United States or Canada, other general intangibles, and proceeds of the foregoing, in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by:

(i) delivering certificated securities, intercompany notes and other instruments in which a security interest can be perfected by physical control, in each case to the extent required hereunder or the Security Agreement,

(ii) filing financing statements (or equivalent forms) under the Uniform Commercial Code or the PPSA,

(iii) making any necessary filings with the United States Patent and Trademark Office, United States Copyright Office or Canadian Intellectual Property Office, or

(iv) filings in the applicable real estate records or land registry offices with respect to Mortgaged Properties (or any fixtures related to Mortgaged Properties) to the extent required by the Collateral Documents; and

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the Applicable Intercreditor Agreements; and

(5) the Collateral Agent shall have received counterparts of a Mortgage, together with the other deliverables described in Section 6.11(2)(b), with respect to each Material Real Property listed on Schedule 1.01(2) (to the extent required to be delivered pursuant to Section 6.13) or otherwise required to be delivered pursuant to Section 6.11 (the "**Mortgaged Properties**") duly executed and delivered by the record owner of such property within the time periods set forth in said Sections; *provided* that to the extent any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar recording fees or taxes, the relevant Mortgage shall not secure an amount in excess of the fair market value of the Mortgaged Property subject thereto; *provided*, *further*, that the Loan Parties shall not be required to, and shall not, execute any Collateral Documents that consist of the Mortgages with respect to any Material Real Property located in the United States until (1) such time as Administrative Agent and Lenders have received for any such Material Real Property (where applicable), (i) a completed "life of the loan" Federal Emergency Management Agency standard flood hazard determination, (ii) if any such Material Real Property is located in a "special flood hazard area" (A) a notification to the Borrower or applicable Loan Party of that fact and, if applicable, notification to the Borrower or the applicable Loan Party that flood insurance coverage is not available and (B) evidence of receipt by the Borrower or the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the Borrower or the applicable Loan Party and flood insurance is available in the community in which such Material Real Property is located, evidence of required flood insurance, (2) the Administrative Agent and the Lenders have confirmed that flood insurance due diligence and flood insurance compliance has been completed by the Lenders, and (3) the Administrative Agent has instructed the Loan Parties to execute and deliver such Mortgages.

The foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, the creation, perfection or maintenance of pledges of, or security interests in, Mortgages on, or the obtaining of Mortgage Policies, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in, or the execution or delivery of any Mortgage and the obtaining of title insurance, surveys or Opinions of Counsel with respect to, particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. None of the Agents shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement or the other Loan Documents in regards to the requirements set forth in this definition.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between the Administrative Agent and the Borrower;

(B) the Collateral and Guarantee Requirement shall not apply to any Excluded Assets;

(C) no deposit account control agreement, securities account control agreement or other control agreements or control arrangements shall be required with respect to any deposit account, securities account or other asset specifically requiring perfection through control agreements except to the extent set forth in Section 6.11(3); *provided*, *however*, that this requirement shall be deemed satisfied for so long as the ABL Facility Administrative Agent is acting as agent for the benefit of the Collateral Agent pursuant to the ABL Intercreditor Agreement with respect to any deposit account control agreement or securities account control agreement to which the ABL Facility Administrative Agent is a party;

(D) no actions in any jurisdiction other than the (i) U.S., (ii) Canada or (iii) the jurisdiction in which any Material Foreign Subsidiary or Material Real Property is located shall be required, nor shall the Administrative Agent or Collateral Agent be authorized to take any action outside of such jurisdictions, to create or perfect any security interests in assets located, registered, applied for, filed, or arising under laws outside of such jurisdiction;

(E) no Intellectual Property filings or searches shall be required in any jurisdiction other than (i) the U.S. or (ii) Canada to create or perfect any security interests in any jurisdiction other than the U.S. or Canada;

(F) no stock certificates of Subsidiaries shall be required to be delivered to the Collateral Agent until the date that is 60 days after the formation or acquisition thereof;

(G) no perfection steps shall be required with respect to (i) letter of credit rights, except to the extent constituting a support obligation for other Collateral as to which perfection is accomplished solely by the filing of a UCC or PPSA financing statement (or equivalent form) (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC or PPSA financing statement (or equivalent form)), (ii) commercial tort claims with a value of less than $2,000,000, (iii) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC or PPSA financing statement (or equivalent form), and (iv) promissory notes evidencing debt for borrowed money in a principal amount of less than $2,000,000 individually; and

(H) any Guarantee granted by a Canadian Subsidiary or any other Material Foreign Subsidiary or Foreign Subsidiary Holding Company shall be automatically terminated (and no more than 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of any Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company shall be Collateral) if such Guarantee and/or pledge of the additional Collateral shall cause (or is reasonably expected to cause) any U.S. shareholder (within the meaning of Section 951(b) of the Code) owning directly or indirectly (within the meaning of Section 958(a) of the Code) any Canadian Subsidiary or Material Foreign Subsidiary to include in income for any year an amount under Section 956 of the Code ("**Section 956 Income**") that is in excess of the deduction actually permitted under Section 245A of the Code with respect to such Section 956 Income by more than $1,000,000 (including if the proposed treasury regulations promulgated under Section 956 tentatively permitting such a deduction are revoked or altered or replaced by other authority, in any case, which limits in any way the ability of any U.S. shareholder of any Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company to claim a deduction under Section 245A of the Code to offset such Section 956 Income in excess of $1,000,000 resulting from the Guarantee by such Canadian Subsidiary, Material Foreign Subsidiary or Foreign Subsidiary Holding Company and/or the inclusion of more than 65% of its voting Equity Interests in the Collateral; *provided* that such limitation on the ability to claim such deduction must arise as a matter of applicable law and not as result of any action or fact that is within the control of Holdings or any of its Subsidiaries) (any Equity Interests of the type described in this clause (H) and excluded from being Collateral being, "**Excluded CFC Equity Interests**" and any Subsidiary of the type described in this clause (H) being, "**Excluded CFC Subsidiary**").

"**Collateral Documents**" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), the Intercompany Subordination Agreement, each of the collateral assignments, security agreements, hypothecs, pledge agreements, Control Agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(d), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"Combined Adjustment Amounts" means (a) all amounts added back pursuant to clause (l) of the definition of "Adjusted EBITDA", together with any similar adjustments made in accordance with Section 1.07(3)), **(b) all amounts added back pursuant to** clause (n) of the definition of "Adjusted EBITDA"**, (c) all exclusions pursuant to** clause (1) of the definition of "Consolidated Net Income" and (d) to the extent **that any amounts in respect of any inventory-related charges, write-offs or write-downs which are added back pursuant to clause (d) of "Adjusted EBITDA" or excluded from "Consolidated Net Income" pursuant to clause (9) of the definition thereof exceed $7,500,000 in the aggregate for the relevant period, such excess amount.**

"**Commitment**" means Closing Date Term Loan Commitments~~, Refinancing Commitments~~ or Extended Commitments, ~~or any commitment in respect of Replacement Loans,~~ as the context may require.

"**Commitment Letter**" means that certain Commitment Letter, dated as of May 6, 2019, among the Borrower, KKR Credit Advisors (US) LLC, KKR Capital Markets LLC, HPS Investment Partners, LLC, TCW Asset Management Company LLC and GoldenTree Asset Management, LP, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Committed Loan Notice** " means a written notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of LIBOR Rate Loans of a given Class, pursuant to Section 2.02(1), which shall be substantially in the form of Exhibit A.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

"**Compensation Period**" has the meaning specified in Section 2.12(3)(b).

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1));

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i) Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year of the Borrower in which the Closing Date occurs and (ii) the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii); and

(3) to the extent that compliance with any Financial Covenant under Section 7.10 is (or was) required in respect of the period covered by such financial statements, certifying as to (and containing all information and calculations necessary for determining) compliance with such Financial Covenant as of the last day of the applicable Test Period.

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt and other long-term liabilities, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) all Indebtedness consisting of Loans (as defined in the ABL Credit Agreement), Swing Line Loans (as defined in the ABL Credit Agreement) and obligations in respect of Letters of Credit (as defined in

the ABL Credit Agreement) to the extent otherwise included therein or any other revolving loans, swingline loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs and (K) the current portion of any liabilities in respect of Hedge Agreements, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and amortization of Capitalized Software Expenditures of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated First Lien Debt**" means as of any date of determination, with respect to the Borrower and its Subsidiaries, (a) Loans under this Agreement, Loans (as defined in the ABL Credit Agreement) (including any Loans incurred by the Borrower in connection with the Incremental ABL Loans which amount shall be deemed to be equal to the Average ABL Amount irrespective of the actual amount outstanding thereunder, Capitalized Lease Obligations and other Consolidated Total Debt secured by Liens on the Collateral (or any portion thereof) that do not rank junior (but without regard to the control of remedies) to Liens securing the Obligations and the Liens securing the ABL Obligations *minus* (b) up to $20,000,000 of cash and Cash Equivalents which are included in the consolidated balance sheet of the Borrower and its Subsidiaries on deposit in accounts in which the Administrative Agent, Collateral Agent or ABL Facility Administrative Agent has established "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable), and which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments, (d) the interest component of Capitalized Lease Obligations and (e) net payments, if any, pursuant to interest rate obligations under any Hedge Agreement with respect to Indebtedness); *plus*

(2) consolidated capitalized interest of such Person and its Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, exceptional, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any multi-year strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of stores or facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of stores or facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and IP Rights development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments); *provided* that amounts added back pursuant to this clause (1), when combined with ~~adjustments pursuant to clause (l) (together with any similar adjustments made in accordance with Section 1.07(3)), and clause (n) of the definition of "Adjusted EBITDA"~~ **all other Combined Adjustment Amounts for such period,** shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis;

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business or consistent with industry practice) or income (loss) from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of);

(5) solely for the purpose of the Available Amount, the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Subsidiary thereof in respect of such period);

(6) solely for the purpose of determining the Available Amount, the Net Income for such period of any Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness,

(b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP~~;~~ **) (*provided* that, to the extent that any amounts in respect of any inventory related charges, write-offs or write-downs which are deducted pursuant to this clause (9) exceed $7,500,000 in the aggregate in such period, such excess, when combined with all other Combined Adjustment Amounts for such period, shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis);**

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the syndication and incurrence of any Facilities), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Indebtedness evidenced by this Agreement or the ABL Facility) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, in each case only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so excluded to the extent not so reimbursed within such 365 days);

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) the amount of any management, monitoring, consulting, transaction and advisory fees and related expenses paid to the Investors (or any accruals relating to such fees and related expenses) during such period to the extent otherwise permitted by Section 7.06;

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

For the avoidance of doubt, **and notwithstanding anything** in this Agreement to the contrary**, no amounts in respect of lost revenue nor the effect thereof shall be excluded as an extraordinary loss or otherwise in determining "Consolidated Net Income" for any purpose in any period; *provided* that the foregoing shall not prohibit the inclusion of amounts of proceeds received or receivable from business interruption insurance in determining "Consolidated Net Income" as described in the succeeding paragraph.**

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Subsidiaries, Consolidated Net Income will include **(I)** the amount of proceeds received or receivable from business interruption insurance~~,~~ **only to the extent that such amount is actually received during such period and provided that such amount shall be applied to the fiscal quarter during which such business interruption occurred and (II)** the amount of any expense or charges incurred by such Person or its Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party~~,~~ and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, in each case **for this clause (II)** only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so excluded to the extent not so reimbursed within such 365 days).

"**Consolidated Secured Debt**" means, as of any date of determination, with respect to the Borrower and its Subsidiaries, the aggregate amount of Consolidated Total Debt that is secured by a Lien on any assets or property of the Borrower or any of its Subsidiaries that constitutes Collateral.

"**Consolidated Total Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition), consisting of Indebtedness for borrowed money, Purchase Money Obligations, Capitalized Lease Obligations, debt obligations evidenced by notes or similar instruments and Guarantees of Indebtedness listed above *minus* (b) up to $20,000,000 of cash and Cash Equivalents on the consolidated balance sheet of the Borrower and its Subsidiaries and which are on deposit in accounts in which the Administrative Agent, Collateral Agent or ABL Facility Administrative Agent has established "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) **(*provided* that, that solely for purposes of determining compliance with the Financial Maintenance Covenant set forth in Section 7.10 (and not for any other purpose under this Agreement), such amount of cash and Cash Equivalents shall not exceed (i) for the Test Period ending May 1, 2021, $40,000,000, (ii) for the Test Period ending July 31, 2021, $30,000,000 and (iii) for the Test Period ending October 30, 2021 and for each Test Period ending thereafter, $20,000,000; it being understood that for purposes of determining compliance with the Financial Maintenance Covenant set forth in Section 7.10, for Test Periods ending after the Closing Date through and including February 1, 2021, there shall be no limit on the amount of cash and Cash Equivalents that may be deducted pursuant to this clause (b)) and for Test Periods ending May 1, 2021 and thereafter, the amount of cash and Cash Equivalents that may be deducted pursuant to this clause (b) shall be limited to the amounts set forth in the foregoing clauses (i), (ii), and (iii)**, and which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date; *provided* that, (i) for purposes of determining the outstanding amount of Loans (as defined in the ABL Credit Agreement) as of the applicable Test Period, such amount shall be deemed to be equal to the Average ABL Amount for such date irrespective of the actual amount outstanding thereunder and (ii) Consolidated Total Debt will not include Non-Recourse Indebtedness and Indebtedness in respect of any (1) letter of credit, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations, except any unpaid termination payments thereunder.

"**Consolidated Working Capital**" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities. In measuring any increase or decrease in Consolidated Working Capital for any period, (1) to the extent the Borrower or any Subsidiary has consummated during such period any one or more acquisitions or dispositions of any Person, then (a) in the case of an acquisition, the Consolidated Working Capital of such acquired Person as of the date of the consummation of such acquisition (after giving effect to the transactions consummated with respect to such acquisition) will be added to the Consolidated Working Capital of the Borrower and its Subsidiaries as of the first day of such period and (b) in the case of a disposition, the Consolidated Working Capital of the disposed Person as of the date of the disposition of such Person shall be subtracted from the Consolidated Working Capital of the Borrower and its Subsidiaries as of the first day of such period and (2) the application of recapitalization or purchase accounting as a result of any acquisitions or dispositions completed during such period will be excluded.

"**Contract Consideration**" has the meaning specified in clause (2)(j) of the definition of "Excess Cash Flow."

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

"**Control Agreement**" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, which provides for the Collateral Agent to have "control" (as defined in Section 9-104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) of deposit Accounts or securities Accounts, as applicable.

"**Controlled Investment Affiliate**" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

~~"**Credit Agreement Refinanced Debt**" has the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness."~~

~~"**Credit Agreement Refinancing Indebtedness**" means secured or unsecured Indebtedness of the Borrower or any Guarantor; *provided* that:~~

~~(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or in part, Indebtedness that is either (a) Loans, or (b) other Credit Agreement Refinancing Indebtedness ("**Credit Agreement Refinanced Debt**");~~

~~(2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Credit Agreement Refinanced Debt being exchanged, extended, renewed, replaced or refinanced except to the extent permitted under Section 1.02(10) (*plus* (a) the amount of all unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), and other similar amounts payable with respect to the Credit Agreement Refinanced Debt and (b) underwriting discounts, fees, commissions, costs, expenses and other similar amounts payable with respect to such refinancing);~~

(3) (I) the (a) Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Credit Agreement Refinanced Debt and (b) final maturity date of such Credit Agreement Refinancing Indebtedness is no earlier than the final maturity date of the Credit Agreement Refinanced Debt and (II) All-In-Yield with respect to such Credit Agreement Refinancing Indebtedness (or similar interest rate spread applicable to such Credit Agreement Refinancing Indebtedness) shall not be higher than the All-In-Yield for such Indebtedness (or similar interest rate spread applicable to such Replaced Loans) immediately prior to the consummation of such Credit Agreement Refinancing Indebtedness;

(4) any mandatory prepayments of:

(a) any Permitted Junior Priority Refinancing Debt or any Credit Agreement Refinancing Indebtedness that comprises unsecured notes or loans may not be made except to the extent that prepayments are (i) otherwise permitted hereunder and (ii) to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the Loans and any such Permitted Equal Priority Refinancing Debt; and

(b) any Permitted Equal Priority Refinancing Debt shall be made on a *pro rata* basis or less than *pro rata* basis (but not greater than a pro rata basis) with the Closing Date Term Loans (other than pursuant to a refinancing otherwise permitted hereunder or with respect to greater than *pro rata* payments to an earlier maturing tranche);

(5) such Indebtedness is not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Guarantor;

(6) if such Indebtedness is secured:

(a) such Indebtedness is not secured by any assets or property of Holdings, the Borrower or any Subsidiary that does not constitute Collateral;

(b) the security agreements relating to such Indebtedness are substantially similar to or the same as the Collateral Documents (as determined in good faith by a Responsible Officer of the Borrower);

(c) if such Indebtedness is secured, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Applicable Intercreditor Agreement; and

(7) the covenants and events of default applicable to such Indebtedness are substantially identical to, or, taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Credit Agreement Refinanced Debt, in each case as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided further* that this clause (7) will not apply to:

(i) terms addressed in the preceding clauses (1) through (6);

(ii) fees and funding discounts;

~~(iii) redemption, prepayment or other premiums, and~~

~~(iv) covenants and other terms applicable only to periods after the Latest Maturity Date of the Closing Date Term Loans at the time of incurrence of such Indebtedness or added for the benefit of the Lenders.~~

~~Anything to the contrary notwithstanding (including, for the avoidance of doubt, clause (3) above), Credit Agreement Refinancing Indebtedness will include (1) any Registered Equivalent Notes issued in exchange therefor and (2) any bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (so long as such credit facility includes customary "rollover provisions"), in which case, clause (3) of the first proviso in this definition shall not prohibit the inclusion of customary terms for "bridge" facilities, including customary mandatory prepayment, repurchase or redemption provisions.~~

~~For the avoidance of doubt, any voluntary prepayments of Credit Agreement Refinancing Indebtedness may be made on a *pro rata* basis or less than *pro rata* basis, but not greater than pro rata basis, with other Loans.~~

"**Cure Amount**" has the meaning specified in Section 8.04(1).

"**Cure Deadline**" has the meaning specified in Section 8.04(1).

"**Cure Right**" has the meaning specified in Section 8.04(1).

"**Debt Representative** " means, with respect to any series of Indebtedness secured by Liens permitted under clause (7)(g) and (21) of the definition of "Permitted Liens"~~;~~ **or** Liens securing Indebtedness permitted under clause (25) of Section 7.02(b)~~, Permitted Equal Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt~~, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Debtor Relief Laws** " means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, proposals or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Declined Proceeds**" has the meaning specified in Section 2.05(2)(g).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Default Rate**" means an interest rate ~~with respect to any LIBOR Rate Loan or Base Rate Loan~~, equal to (1) the Base Rate, *plus* (2) the Applicable Rate applicable to Base Rate Loans, ~~respectively,~~ *plus* (3) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any **LIBOR Rate** Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such **LIBOR Rate** Loan (**prior to** giving effect **to any conversion to a Base Rate Loan pursuant** to Section 2.02(3)), *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

"**Defaulting Lender**" means, subject to Section 2.17(2), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in writing and in a manner otherwise satisfactory to the Administrative Agent that it will comply with its funding obligations, (d) has, or has a direct or indirect parent company that has, (i) become or is the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, interim receiver, receiver and manager, custodian, conservator, trustee, administrator, assignee for the benefit of creditors, monitor or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (e) has become the subject of a Bail-in Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under this definition shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

"**Deposit Account**" means any checking or other demand deposit account maintained by the Borrower, including any "deposit accounts" under Article 9 of the UCC. All funds in such Deposit Accounts (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Deposit Accounts, subject to this Agreement, the Security Agreement and the ABL Intercreditor Agreement.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or a Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on such Designated Non-Cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Borrower, any Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation of the Available Amount.

"**Designated Revolving Commitments**" means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Subsidiary by any Person other than the Borrower or any Subsidiary that have been designated in an Officer's Certificate delivered to the Administrative Agent as "Designated Revolving Commitments" until such time as the Borrower subsequently delivers an Officer's Certificate to the Administrative Agent to the effect that such commitments will no longer constitute "Designated Revolving Commitments;"*provided* that on the date such Designated Revolving Commitments are established, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the applicable Total Net Leverage Ratio, First Lien Net Leverage Ratio and the availability of any applicable Basket hereunder on such date after giving *pro forma* effect to the incurrence of the entire committed amount of

the Indebtedness thereunder (but without netting any cash proceeds thereof), in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with the Total Net Leverage Ratio, First Lien Net Leverage Ratio and the availability of any Baskets hereunder. For the avoidance of doubt, in the case of any Designated Revolving Commitments permitted hereunder, the reference to the "incurrence" of Indebtedness shall refer to the date on which such Designated Revolving Commitments are established.

"**discharge**" means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, any such case in whole or in part.

"**Discount Prepayment Accepting Lender**" has the meaning assigned to such term in Section 2.05(1)(e)(B)(2).

"**Discount Range**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Amount**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Notice**" means a written notice of the Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(C)(1) substantially in the form of Exhibit J.

"**Discount Range Prepayment Offer**" means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent's receipt of a Discount Range Prepayment Notice.

"**Discount Range Prepayment Response Date**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Proration**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(3).

"**Discounted Prepayment Determination Date**" has the meaning assigned to such term in Section 2.05(1)(e)(D)(3).

"**Discounted Prepayment Effective Date**" means in the case of the Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(C) or Section 2.05(1)(e)(D), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

"**Discounted Term Loan Prepayment**" has the meaning assigned to such term in Section 2.05(1)(e)(A).

"**disposition**" has the meaning set forth in the definition of "Asset Sale".

"**Disqualified Institution**" means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower or the Sponsor to (i) the Structuring Advisor and the Administrative Agent from time to time on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by or on behalf of the Borrower or the Sponsor to the Structuring Advisor prior to the Closing Date (a copy of which shall be provided to the Administrative Agent prior to the Closing Date) and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) (excluding, in the case of clause (a), bona fide debt funds) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Borrower or the Sponsor to (i) the Structuring Advisor and the Administrative Agent on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date; it being understood and agreed that the identification of any Person as a Disqualified Institution after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan, subject to Section 10.07(n), until such time such Person no longer constitutes a Lender. The identity of Disqualified Institutions shall be posted or distributed to all Lenders and prospective assignees following request therefor.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control, asset sale, casualty, condemnation, expropriation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation, expropriation or eminent domain), in whole or in part, in each case prior to the date 91 days after Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of, future, current or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability; *provided further* any Capital Stock held by any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary or in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Domestic Subsidiary**" means any direct or indirect Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

"**ECF Payment**" has the meaning specified in Section 2.05(2)(a).

"**ECF Percentage**" has the meaning specified in Section 2.05(2)(a).

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**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.

"**Eligible Assignee**" means any Person that meets the requirements to be an assignee under Section 10.07(b), *provided* that no Defaulting Lender(s) or Disqualified Institution(s) may be Eligible Assignee(s).

"**Environment**" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

"**Environmental Claim**" means any administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, or proceedings with respect to any Environmental Liability or Environmental Law, (hereinafter "Claims"), including (i) any Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"**Environmental Laws**" means any Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, the protection of human health.

"**Environmental Liability**" means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) resulting from or relating to (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Interests**" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is "insolvent" (within the meaning of Section 4245 of ERISA) or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 412(c) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excess Cash Flow**" means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period (*provided* that for purposes of determining Excess Cash Flow for the Stub ECF Period, decreases in Consolidated Working Capital shall be determined by reference to the entire fiscal year rather than solely with respect to the Stub ECF Period),

(d) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,

(e) cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income, and

(f) cash gains excluded by virtue of clauses (1) through (15) of the definition of "Consolidated Net Income"; *over*

(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of any Permitted Acquisition or other investment permitted hereunder) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of clauses (1) through (15) of the definition of "Consolidated Net Income,"

(b) without duplication of amounts deducted pursuant to clause (j) below in prior fiscal years, the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of IP Rights accrued or made in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, in each case except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Subsidiary or the proceeds from any ABL Cure Amount or any Cure Amount, and without duplication of any amounts deducted from Excess Cash Flow for a prior period,

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans~~,~~ **and** the ABL Facility to the extent there is an equivalent permanent reduction in commitments thereunder (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) ~~and Credit Agreement Refinancing Indebtedness~~, in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07 and mandatory

prepayment of Term Loans pursuant to Section 2.05(2)(b) or 2.05(2)(c), any mandatory prepayment of the ABL Facility pursuant to Section 2.05(2) of the ABL Credit Agreement to the extent there is an equivalent permanent reduction in commitments thereunder, ~~any mandatory discharge of Credit Agreement Refinancing Indebtedness pursuant to the corresponding provisions of the governing documentation thereof to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase,~~ but excluding (x) all other prepayments of Term Loans, (y) all prepayments in respect of any revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (z) payments on any Permitted Indebtedness, except in each case to the extent permitted to be paid pursuant to Section 7.05) made during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, in each case, except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid) or the proceeds from any ABL Cure Amount (unless such Indebtedness has been repaid) or any Cure Amount,

(d) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period (*provided* that for purposes of determining Excess Cash Flow for the Stub ECF Period, increases in Consolidated Working Capital shall be determined by reference to the entire fiscal year rather than solely with respect to the Stub ECF Period),

(e) cash payments by the Borrower and its Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(f) without duplication of amounts deducted pursuant to clauses (h) and (i) below in prior fiscal years, the amount of cash consideration paid by the Borrower and its Subsidiaries (on a consolidated basis) in connection with investments (other than intercompany Investments among Holdings and its Subsidiaries (including the Borrower), Investments in Cash Equivalents or money market instruments in the ordinary course of business) made during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (including Permitted Acquisitions, investments constituting Permitted Investments and investments or made pursuant to Section 7.05), except to the extent such investments were financed with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) of the Borrower or any Subsidiary, or the proceeds from any ABL Cure Amount or any Cure Amount,

(g) the amount of Restricted Payments paid in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (other than Restricted Payments made pursuant to Section 7.05(b)(15)), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) of the Borrower or any Subsidiary, or the proceeds from any ABL Cure Amount or any Cure Amount,

(h) the aggregate amount of expenditures (to the extent not funded with the proceeds of Funded Debt (unless such Indebtedness has been repaid) (other than the ABL Facility) or the proceeds from any ABL Cure Amount or any Cure Amount) actually made by the Borrower and its Subsidiaries in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period and are not deducted in calculating Consolidated Net Income,

(i) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings, the Borrower and their respective Subsidiaries during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, that are made in connection with any prepayment or redemption of Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and such payments reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.05(2)(a),

(j) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Subsidiaries (the "**Planned Expenditures**"), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with any of the proceeds received from (A) the issuance or incurrence of Funded Debt (other than the ABL Facility) (except to the extent repaid) or (B) any Cure Amount or ABL Cure Amount); *provided* that to the extent that the aggregate amount of cash actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such subsequent period of four consecutive fiscal quarters,

(k) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period *plus* the amount of distributions with respect to taxes made in such period under Section 7.05(b)(14) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(l) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income,

(m) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument, in each case, to the extent permitted hereunder, (including any amendment or other modification of this Agreement, the other Loan Documents and related documents and any ABL Loan Documents) and including, in each case, any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful, and

(n) at the option of the Borrower, any amounts in respect of investments (including Permitted Acquisitions, Investments constituting Permitted Investments and Investments made pursuant to Section 7.05) and Restricted Payments (including related earnouts and similar payments) which could have been deducted pursuant to clauses (g) or (h) above if made in such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, but which are made after the end of such period and prior to the date upon which a mandatory prepayment for such period would be required under Section 2.05(2)(a) (which amounts shall not affect the calculation of Excess Cash Flow in any future period).

"**Excess Cash Flow Period**" means (i) initially, the period from the Closing Date until February 1, 2020 (this clause (i) being the "**Stub ECF Period**") and (ii) thereafter, each fiscal year of the Borrower, commencing with the fiscal year ending on January 30, 2021.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Accounts**" means any Deposit Account of any Loan Party (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $750,000, or in the aggregate with each other account described in this clause (1), in excess of $2,500,000; (2) the balance of which is swept at the end of each Business Day into a Deposit Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account is swept into another Deposit Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account or otherwise maintains Excluded Funds; (4) any Deposit Account that constitutes a disbursement account of the Borrower or any Loan Party the balance of which consists solely of proceeds of Indebtedness, including the proceeds of the Loans or (5) to the extent that it is cash collateral for letters of credit (other than Letters of Credit as defined under the ABL Credit Agreement) to the extent permitted under the ABL Credit Agreement.

"**Excluded Assets**" means (i) any fee-owned real property that does not constitute Material Real Property and all real property leasehold interests, (ii) pledges and security interests prohibited by any applicable law, rule or regulation (including any legally effective requirement to obtain the consent of any Governmental Authority), (iii) any governmental licenses, permits or state, provincial, territorial or local franchises, charters or authorizations, to the extent a security interest in any such licenses, permits, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction), (iv) Margin Stock and, to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than Holdings, the Borrower, or any Subsidiary of the Borrower), under the terms of any applicable Organizational Documents, joint venture agreement or shareholders' agreement (*provided* that any such prohibition or enforceable right is in existence as of the Closing Date or at the time of formation or acquisition thereof so long as such

prohibition or enforceable right is not created in contemplation of creating an Excluded Asset), equity interests in any person other than directly or indirectly owned Subsidiaries, (v) Excluded Accounts, (vi) any property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangement with an aggregate value of less than $3,500,000 with respect to all such property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangements, to the extent that a pledge thereof or a security interest therein would violate or invalidate such purchase money, Capitalized Lease Obligations or similar arrangement, or create a right of termination in favor of any other party thereto (other than the Borrower or any Guarantor) after giving effect to the applicable anti-assignment clauses of the Uniform Commercial Code, the PPSA or other applicable Laws, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under the Uniform Commercial Code, the PPSA or applicable Laws notwithstanding such prohibition, (vii) personal property to the extent a pledge thereof or a security interest therein would result in a material adverse tax consequence to the Borrower or its Subsidiaries as reasonably determined by the Borrower (in consultation with the Administrative Agent), (viii) personal property for which the Required Lenders and the Borrower have determined in their reasonable judgment and agree in writing that the cost of creating or perfecting such pledges or security interests therein would be excessive in view of the benefits to be obtained by the Lenders therefrom, (ix) any intent-to-use trademark application in Canada or the United States prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto with the Canadian Intellectual Property Office or the United States Patent and Trademark Office (as applicable) (x) Excluded Equity, and (xi) motor vehicles and other goods subject to certificates of title to the extent a Lien thereon cannot be perfected solely by the filing of a UCC or a PPSA financing statement (or equivalent form). For purposes of this definition, "personal property" means goods, investment property, instruments, documents of title, chattel paper, intangibles and money, each as defined in the Uniform Commercial Code.

"**Excluded Contribution**" means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Subsidiaries; and

(3) the sale (other than to a Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower;

in each case designated as Excluded Contributions pursuant to an Officer's Certificate at the time of receipt by the Borrower thereof.

"**Excluded Equity**" means Equity Interests (i) [reserved], (ii) of any Subsidiary acquired pursuant to a Permitted Acquisition if such Equity Interests are pledged and/or mortgaged as security for any assumed Indebtedness permitted under Section 7.02(b)(14) and if and for so long as the terms of such Indebtedness prohibit the creation of any other Lien on such Equity Interests, (iii) [reserved], (iv) of any Subsidiary with respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment and agreed in writing that the costs of providing a pledge of such Equity Interests or perfection thereof is excessive in view of the benefits to be obtained by the Secured Parties therefrom, (v) Excluded CFC Equity Interests, if applicable, (vi) to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than Holdings, the Borrower or any Subsidiary of the Borrower), under the terms of any applicable Organizational Documents, joint venture

agreement or shareholders' agreement, equity interests in any person other than wholly-owned Subsidiaries; and (vii) of any Subsidiary outside the United States the pledge of which is prohibited by applicable Laws or which would reasonably be expected to result in a violation or breach of, or conflict with, fiduciary duties of such Subsidiary's officers, directors or managers.

"**Excluded Funds**" means all amounts (i) solely for the purpose of payroll, employee wages and benefits and payment of taxes and (ii) solely for the purpose of trust related activities.

"**Excluded Proceeds**" means, with respect to any Asset Sale or Casualty Event, the sum of (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that the Required Facility Lenders agree to exclude from the requirement to be applied to prepay the applicable Term Loans pursuant to Section 2.05(2)(b).

"**Excluded Subsidiaries**" means all of the following and "**Excluded Subsidiary**" means any of them:

(1) [reserved],

(2) any Foreign Subsidiary that is not a Material Foreign Subsidiary and following the application of clause (H) being, any Excluded CFC Subsidiary,

(3) [reserved],

(4) [reserved],

(5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law, accounting policies or by Contractual Obligation existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty, or if such Guaranty would require governmental (including regulatory) or third party (other than a Loan Party) consent, approval, license or authorization, unless such consent, approval, license or authorization has been received, or is received after commercially reasonable efforts to obtain the same, which efforts may be requested by the Administrative Agent,

(6) any Securitization Subsidiary,

(7) [reserved],

(8) [reserved],

(9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any material adverse tax consequences) of providing the Guaranty is excessive in relation to the benefits to be obtained by the Lenders therefrom;

(10) any special purpose entity formed for the primary purpose to hold a leasehold interest in real property that is subject to a Sale-Leaseback Transaction and that has no other activities other than those incidental to holding such leasehold interest,

(11) [reserved]; and

(12) any Subsidiary acquired pursuant to a Permitted Acquisition or similar Investment financed at the time of such Permitted Acquisition or similar Investment with secured Indebtedness incurred under Section 7.02(b)(14) and assumed indebtedness (not incurred in contemplation of such Permitted Acquisition or similar Investment) and any Subsidiary thereof that Guarantees such secured Indebtedness, in each case, to the extent, and so long as, such secured Indebtedness prohibits any such Subsidiary from becoming a Guarantor.

"**Excluded Taxes**" means, with respect to each Agent and each Lender,

(1) any tax on such Agent or Lender's net income or profits (or franchise tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction, other than a connection arising from such Agent or Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document),

(2) any branch profits tax or similar tax imposed by any jurisdiction described in clause (1),

(3) [reserved],

(4) any withholding tax attributable to a Lender's failure to comply with Section 3.01(3),

(5) any U.S. federal withholding tax imposed under FATCA, and

(6) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (5) of this definition.

"**Expected Cure Amount**" has the meaning specified in Section 8.04(2).

"**Extended Commitments**" means the Term Loan Commitments held by an Extending Lender.

"**Extended Loans**" means the Term Loans made pursuant to Extended Commitments.

"**Extending Lender**" means each Lender accepting an Extension Offer.

"**Extension**" has the meaning specified in Section 2.16(1).

"**Extension Amendment**" has the meaning specified in Section 2.16(2).

"**Extension Offer**" has the meaning specified in Section 2.16(1).

"**Facilities**" means the Closing Date Term Loans~~,~~ **or** any Extended ~~Loans, any Refinancing Term Loans or any Replacement~~ Loans, as the context may require, and "**Facility**" means any of them.

"**fair market value**" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

"**FATCA**" means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any regulations promulgated thereunder or official interpretations thereof), and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements (together with any law implementing such agreements).

"**FCPA**" means the U.S. Foreign Corrupt Practices Act of 1977, as amended.

"**Federal Funds Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent from three major banks of recognized standing selected by it on such day on such transactions as determined by the Administrative Agent.

"**Federal Reserve Board**" means the Board of Governors of the Federal Reserve System of the United States of America.

"**Fee Letters** " means, collectively, (i) the Administrative Agent Fee Letter and (ii) that certain OID Letter, dated as of May 6, 2019, by and among the Borrower, KKR Credit Advisors (US) LLC, KKR Capital Markets LLC, HPS Investment Partners, LLC, TCW Asset Management Company LLC and GoldenTree Asset Management, LP, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Financial Covenants**" has the meaning specified in Section 7.10(2).

"**Financial Maintenance Covenant**" has the meaning specified in Section 7.10(1).

"**Financial Officer** " means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

"**First Lien Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Debt outstanding the last day of such Test Period to (b) Adjusted EBITDA of the Borrower and its Subsidiaries for such Test Period, in each case calculated on a *pro forma basis* with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"**Fixed Amounts**" has the meaning specified in Section 1.07(9).

"**Flood Insurance Laws**" means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Flood Insurance Requirements**" has the meaning specified in Section 6.07(2).

"**floor**" means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

"**Foreign Asset Sale**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Casualty Event**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Lender**" means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Plan**" means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States and Canada (other than benefit plans, programs or agreements that are mandated by applicable Laws).

"**Foreign Subsidiary**" means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**Foreign Subsidiary Holding Company**" means any Domestic Subsidiary (a) substantially all of the assets of which consist of the Capital Stock (and, if applicable, Indebtedness) of one or more Foreign Subsidiaries that are CFCs or (b) that is treated as a disregarded entity for U.S. federal income tax purposes, and all assets of which are located outside of the United States and which may include Capital Stock (or, if applicable, Indebtedness) of one or more Foreign Subsidiaries.

"**Fund**" means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**Funded Debt**" means all Indebtedness of the Borrower and its Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**GAAP**" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time.

At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided further* that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower's election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively.

Notwithstanding the foregoing, if at any time any change occurring after the Closing Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend such ratio, requirement or covenant (including the levels applicable herein to any computation of First Lien Net Leverage Ratio and Total Net Leverage Ratio) to preserve the original intent thereof in light of such change in GAAP (or IFRS) with the desired result that the criteria for evaluating the Borrower's financial condition shall be substantially the same after such change as if such change had not been made; *provided further* that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP or IFRS, or the respective interpretation or application thereof, and that such restatements will not solely as a result of such change in GAAP or IFRS (or such interpretation or application) result in a Default or an Event of Default under the Loan Documents.

Notwithstanding anything to the contrary contained above or in the definition of "Capitalized Lease Obligation," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capitalized Lease Obligations in conformity with GAAP on the date hereof shall be considered Capitalized Lease Obligations, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

"**Governmental Authority**" means the government of the United States, Canada or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, governmental department, commission, board, bureau, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency).

"**Granting Lender**" has the meaning specified in Section 10.07(g).

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or

other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantor**" has the meaning specified in clause (2) of the definition of "Collateral and Guarantee Requirement" For avoidance of doubt, the Borrower may, in its sole discretion, cause any domestic Parent Company or Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Subsidiary shall be a Guarantor hereunder for all purposes.

"**Guaranty**" means (a) the Guarantee of the Obligations by the Guarantors substantially in the form of Exhibit E, (b) each other Guarantee and Guarantee supplement delivered pursuant to Section 6.11 and (c) each other Guarantee and Guarantee supplement delivered by any Parent Company or Subsidiary pursuant to the second sentence of the definition of "Guarantor".

"**Hazardous Materials** " means all explosive or radioactive substances or wastes, and all other hazardous or toxic substances or wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, or radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

"**Hedge Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Hedge Bank**" means any Person party to a Hedge Agreement that is an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an ABL Facility Administrative Agent, an ABL Lender or an Affiliate of any of the foregoing.

"**Hedging Obligations**" means, with respect to any Loan Party, the obligations of such Person under any Hedge Agreement.

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

"**Hot Topic**" means Hot Topic, Inc., a California corporation.

"**Hot Topic Guarantee**" means the guarantee by Torrid Holding LLC, a Delaware limited liability company ("**Torrid Guarantor**"), of the Secured Notes pursuant to that certain Third Supplemental Indenture (the "**Third Supplemental Indenture**") dated as of January 9, 2018 among Hot Topic, the Guarantors (as defined in the Indenture referred to therein), Torrid Guarantor and The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture referred to therein.

"**HPS**" means HPS Investment Partners, LLC (together with one or more affiliates and/or investment vehicles advised and/or managed by it or one of its affiliates).

"**Identified Participating Lenders**" has the meaning specified in Section 2.05(1)(e)(C)(3).

"**Identified Qualifying Lenders**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**IFRS**" means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immediate Family Members**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Incurrence Based Amounts**" has the meaning specified in Section 1.07(9).

"**Incremental ABL Loans**" means Loans (as defined in the ABL Credit Agreement) incurred pursuant to an increase in the Aggregate Commitments (as defined in the ABL Credit Agreement) under the ABL Facility pursuant to Section 2.15 of the ABL Credit Agreement.

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business;

(d) representing the net obligations under any Hedging Obligations; or

(e) in respect of Disqualified Stock

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

provided that, notwithstanding any of the foregoing sub-clauses of this definition, Indebtedness will be deemed not to include:

(i) Guarantees of obligations not constituting Indebtedness described herein incurred in the ordinary course of business or consistent with industry practice,

(ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) obligations under or in respect of Qualified Securitization Facilities that are non-recourse to the Loan Parties other than any Standard Securitization Undertakings,

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Indemnified Liabilities**" has the meaning specified in Section 10.05.

"**Indemnitees**" has the meaning specified in Section 10.05.

"**Independent Assets or Operations**" means, with respect to any Parent Company, that Parent Company's' total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and its Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

"**Information**" has the meaning specified in Section 10.09.

"**Intellectual Property**" has the meaning specified in the Security Agreement.

"**Intellectual Property Security Agreements**" has the meaning specified in the Security Agreement.

"**Intercompany Subordination Agreement**" means the Intercompany Subordination Agreement, dated as of the Closing Date, substantially in the form of Exhibit Q executed by the Borrower and each Subsidiary that is party thereto.

"**Interest Payment Date**" means, (a) as to any Loan of any Class other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date of the Loans of such Class; *provided* that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan of any Class, the last Business Day of each fiscal quarter (with each such fiscal quarter end being set forth on Schedule 1.01(3)) and the applicable Maturity Date of the Loans of such Class.

"**Interest Period**" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one, two, three or six months thereafter, or to the extent consented to by the Administrative Agent and each applicable Lender, twelve months (or such period of less than one month as may be consented to by the Administrative Agent and each applicable Lender), as selected by the Borrower in its Committed Loan Notice; *provided* that:

(1) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(2) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(3) no Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such LIBOR Rate Loan is a part.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

"**Investment Grade Securities**" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, or repayment or other amount received in cash by the Borrower or a Subsidiary in respect of such Investment.

"**Investors** " means (a) the Sponsor and (b) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"**IP Rights**" has the meaning specified in Section 5.15.

"**IRS**" means Internal Revenue Service of the United States.

"**IT Purchase Agreement**" means that certain IT Asset Purchase Agreement dated as of the date hereof, by and between Hot Topic and the Borrower, as amended or modified from time to time in accordance with the terms hereof and thereof.

"**Judgment Currency**" has the meaning specified in Section 10.26.

"**Junior Lien Debt**" means any Indebtedness for borrowed money of any Loan Party that is secured on a junior basis to the Closing Date Term Loans.

"**Latest Maturity Date** " means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any ~~Refinancing Term Loan, Replacement Loan or any~~ Extended Loan, in each case as extended in accordance with this Agreement from time to time.

"**Laws**" or "**laws**" means, collectively, all international, foreign, federal, provincial, territorial, state and local laws (including common law), statutes, treaties, rules, legally enforceable guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the legally binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"**Lease**" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"**Legal Holiday**" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a "Lender." For avoidance of doubt, each ~~Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each~~ Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender.

"**Lender Indemnitees**" shall have the meaning provided in Section 10.05.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent in writing.

"**LIBOR Borrowing**" means a Borrowing comprised of LIBOR Rate Loans.

"**LIBOR Rate**" means the per annum rate of interest (rounded upwards, if necessary, to the next 1/16th of one percent (1%)) and in no event less than one percent (1%)) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an Interest Period for a term equivalent to such period, equal to the London Interbank Offered Rate, or such other rate per annum as is widely recognized as the successor rate thereto if the ICE Benchmark Administration is no longer making a London Interbank Offered Rate, as published on such day and time on the applicable Bloomberg screen page (or such other commercially available source providing quotations of the "Libor Rate" as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or if such rate is not available for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted with a term equivalent to such Interest Period would be offered by three major banks in the London interbank market at their request at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"**LIBOR Rate Loan**" means a Revolving Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, assignment, deposit arrangement, charge, preference, priority, security interest or encumbrance or preferential arrangement of any kind in respect of such asset, and any other arrangement having the effect of providing security, whether or not filed, recorded or otherwise perfected under applicable law, including, any conditional sale agreement, capital lease, title retention agreement or consignment agreement, any option or other agreement to sell or give a security interest, any netting arrangement, defeasance agreement or reciprocal fee arrangement, and any authorized filing of or agreement to give any financing statement (or equivalent form) under the UCC or the PPSA (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

"**Loan**" means an extension of credit under Article II ~~or the making of Replacement Loans pursuant to Section 10.01 by a Lender to the Borrower in the form of a Term Loan~~.

"**Loan Documents**" means, collectively, (a) this Agreement, (b) the Term Notes, (c) any amendments thereto, including any ~~Refinancing Amendment,~~ Extension Amendment ~~or amendment in respect of Replacement Loans~~, (d) the Guaranty, (e) the Collateral Documents, (f) the Applicable Intercreditor Agreements and (g) the Fee Letters (other than for purposes of Section 10.01).

"**Loan Parties**" means, collectively, Holdings, the Borrower and each Subsidiary Guarantor.

"**Management Services Agreement**" means the management services agreement or similar agreements among the Sponsor or certain of its respective management companies associated with it or their advisors, if applicable, and the Borrower (or any Parent Company).

"**Management Stockholders** " means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date or will become holders of such Equity Interests in connection with the Transactions.

"**Margin Stock**" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Material Adverse Effect**" means, a circumstance or condition that would materially and adversely affect (a) the business, operations or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents to which it is a party or (c) the rights and remedies of the Lenders, the Collateral Agent and the Administrative Agent under the Loan Documents.

"**Material Foreign Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Foreign Subsidiaries (other than Canadian Subsidiaries) (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Subsidiaries of such Foreign Subsidiary at the last day of the most recent Test Period) were equal to or greater than 7.5% of Total Assets of such Foreign Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the revenues of the Subsidiaries of such Foreign Subsidiary for such Test Period) were equal to or greater than 7.5% of the consolidated gross revenues of such Foreign Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Foreign Subsidiaries (other than Canadian Subsidiaries) that are not Material Foreign Subsidiaries comprise in the aggregate more than (when taken together with the Total Assets of the Subsidiaries of such Foreign Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Test Period or more than (when taken together with the gross revenues of the Subsidiaries of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Test Period) 7.5% of the consolidated gross revenues of such Foreign Subsidiaries for such Test Period, then the Borrower shall, not later than thirty (30) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true. Notwithstanding the forgoing, any Foreign Subsidiary (other than a Canadian Subsidiary) that holds Intellectual Property that is material to the business, taken as a whole, of any of Holdings, the Borrower or any Subsidiary (as determined by the Borrower in good faith) shall be deemed to be a Material Foreign Subsidiary for purposes of this Agreement.

"**Material Real Property**" means (a) any fee-owned real property located in the United States or Canada and owned by any Loan Party, having a fair market value in excess of $1,000,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof and (b) any fee-owned real property located outside of the United States or Canada and owned by any Loan Party, having a fair market value in excess of $4,000,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof; *provided* that for the avoidance of doubt, Material Real Property will not include any Excluded Assets.

"**Material Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Domestic and Canadian Subsidiaries (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and its Domestic and Canadian Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and its Domestic and Canadian Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Subsidiaries that are not Material Subsidiaries solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 5.0% of Total Assets of the Borrower and its Domestic and Canadian Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Test Period or more than (when taken together with the gross revenues of the Subsidiaries of such Subsidiaries for such Test Period) 5.0% of the consolidated gross revenues of the Borrower and its Domestic and Canadian Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Test Period, then the Borrower shall, not later than thirty (30) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Subsidiaries as "Material Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries. At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made based on the Pro Forma Financial Statements.

"**Maturity Date**" means (i) with respect to the Closing Date Term Loans, in each case that have not been extended pursuant to Section 2.16, the date that is five and one-half (5.5) years after the Closing Date~~,~~ **and** (ii) with respect to any tranche of Extended Loans, the final maturity date as specified in the applicable Extension Amendment~~, (iii) with respect to any Refinancing Term Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to Replacement Loans, the final maturity date as specified in the applicable amendment~~; *provided* that in each case, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Mortgage Policies**" has the meaning specified in Section 6.11(2)(b)(ii).

"**Mortgaged Properties**" has the meaning specified in paragraph (5) of the definition of "Collateral and Guarantee Requirement."

"**Mortgages**" means collectively, the deeds of trust, trust deeds, debentures, charges, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(1) and any other deeds of trust, trust deeds, debentures, charges, deeds to secure debt or mortgages executed and delivered pursuant to Sections 6.11.

"**Multiemployer Plan**" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Necessary Cure Amount**" has the meaning specified in Section 8.04(2).

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate Cash Equivalent proceeds or other cash amounts received directly or indirectly by or on behalf of the Borrower or any Subsidiary in respect of such Asset Sale or Casualty Event, including any Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Subsidiaries as a result of any such Asset Sale or Casualty Event by a Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable by the Borrower or a Subsidiary as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 2.05(2)(b)) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that (a) subject to clause (b) below, no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed $1,000,000 and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $2,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1)); and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary or any Permitted Equity Issuance by the Borrower or any Parent Company, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees,

underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

"**Non-Consenting Lender**" has the meaning specified in Section 3.07.

"**Non-Defaulting Lender**" means, at any time, a Lender that is not a Defaulting Lender.

"**Non-Extended Lender**" has the meaning specified in Section 2.16.

"**Non-Excluded Taxes**" means all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"**Non-Loan Party**" means any Subsidiary of the Borrower that is not a Loan Party.

"**Non-Recourse Indebtedness**" means Indebtedness that is non-recourse to the Borrower and its Subsidiaries.

"**Notice of Intent to Cure**" has the meaning specified in Section 6.02(1).

"Not Otherwise Applied" means, with reference to any proceeds from any Equity Issuance or the amount of any contributions to the equity capital of the Borrower and its Subsidiaries, (1) that such amount was not previously applied pursuant to (or otherwise included in the calculation of), as applicable, clause (3), (4) or (5) of the Available Amount, Section 7.02(b)(12)(a), Section 7.05(b)(3), 7.05(b)(4), 7.05(b)(14)(h)(ii) and (2) that such Equity Issuance is not Designated Preferred Stock, an Excluded Contribution or Refunding Capital Stock.

"**Obligations**" means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, including the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, premium (including the Prepayment Premium), Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding,

(2) [reserved],

(3) [reserved], and

(4) the Guaranty in respect of each of the foregoing.

"**OFAC**" shall mean the U.S. Department of the Treasury, Office of Foreign Assets Control.

"**Offered Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Offered Discount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Officer's Certificate**" means a certificate signed on behalf of a Person by a Responsible Officer of such Person.

"**OID**" means original issue discount.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower.

"**Organizational Documents**" means

(1) with respect to any corporation or ULC, the certificate or articles of incorporation, amalgamation or continuance or memorandum of association (or other equivalent), as applicable, and the bylaws (or equivalent) or comparable constitutive documents with respect to any non-U.S. or non-Canadian jurisdiction;

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

~~"**Other Applicable ECF**" means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.~~

~~"**Other Applicable Indebtedness**" means Credit Agreement Refinancing Indebtedness secured on a *pari passu* basis with the Closing Date Term Loans, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a *pari passu* basis with the Closing Date Term Loans.~~

~~"**Other Applicable Net Proceeds**" means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.~~

"**Other Taxes**" means any and all present or future stamp, court or documentary Taxes, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"**Outstanding Amount**" means on any date, the outstanding principal amount of any Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans, occurring on such date.

"**Overnight Rate**" means, for any day, with respect to any amount, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Parent Company**" means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Capital Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), will have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of 50.0% or more of the total voting power of the Voting Stock of such Person.

"**Participant**" has the meaning specified in Section 10.07(d).

"**Participant Register**" has the meaning specified in Section 10.07(e).

"**Participating Lender**" has the meaning specified in Section 2.05(1)(e)(C)(2).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the preceding five plan years.

"**Perfection Certificate**" has the meaning specified in the Security Agreement.

"**Permitted Acquisition**" has the meaning specified in clause (3) of the definition of "Permitted Investments."

"**Permitted Asset Swap**" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Subsidiary and another Person; *provided* that (i) any cash or Cash Equivalents received must be applied in accordance with Section 2.05(2)(b)(i) and (ii) the aggregate value (as determined by the Borrower in good faith) of all such Permitted Asset Swaps shall not exceed $10,000,000 in any fiscal year.

"**Permitted Disposition**" means any Asset Sale permitted pursuant to Section 7.04.

~~"**Permitted Equal Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a *pari passu* basis with the Closing Date Term Loans.~~

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

"**Permitted Holder**" means (1) the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of such group and without giving effect to the existence of such group or any other group, such Investor and Management Stockholders, collectively, have beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent, and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Permitted Parent.

"**Permitted Indebtedness**" means Indebtedness permitted to be incurred in accordance with Section 7.02.

"**Permitted Investments**" means:

(1) any Investment (a) in any Loan Party, (b) by any Subsidiary that is a Non-Loan Party in any other Subsidiary that is a Non-Loan Party and (c) by any Loan Party in any Subsidiary that is a Non-Loan Party; *provided* that the aggregate amount of Investments (other than as a result of the transfer of Equity Interests or Indebtedness of any Subsidiary that is a Non-Loan Party to any other Subsidiary that is a Non-Loan Party) outstanding at any time pursuant to this clause (c) shall not exceed $10,000,000;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Subsidiary in any Person (directly or through entities that will be Subsidiaries), if as a result of such Investment (i) such Person becomes a Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Subsidiary, together with any other Investments necessary to consummate the foregoing (a "**Permitted Acquisition**"); *provided* that:

(A) Investments made by Loan Parties in Persons that do not become Loan Parties or in assets that are not owned by a Loan Party pursuant to a Permitted Acquisition permitted by this clause (3) shall be permitted without limitation; *provided* that following such Permitted Acquisition, the aggregate amount of Investments in Subsidiaries that do not become Loan Parties outstanding at any time pursuant to this clause (A) shall not exceed $10,000,000 (*provided* that the limitation set forth in this proviso shall not apply to the Permitted Acquisitions of lines of business or going concerns where a majority of the assets, revenue or Adjusted EBITDA of which are located in Persons that become Guarantors);

(B) (i) subject to Section 1.07(8), immediately before and after giving *pro forma* effect to any such Investment, no Event of Default under Sections 8.01(1) or 8.01(6) will have occurred and be continuing,

(ii) to the extent required by the Collateral and Guarantee Requirement, after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.11, and

(iii) after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.17;

(b) any Investment held by such Person that is acquired pursuant to such Permitted Acquisition; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as set forth on Schedule 7.03 or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; *provided* that the amount of any such Investment or binding commitment may be increased, extended, modified, replaced, reinvested or renewed, (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;

(6) any Investment acquired by the Borrower or any Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at the time outstanding, not to exceed $1,000,000 (with the amount of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided* that if any Investment pursuant to this clause (8) is made in any Person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above (to the extent permitted thereunder) and will cease to have been made pursuant to this clause (8) for so long as such Person continues to be a Subsidiary;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; *provided* that such Equity Interests will not increase the Available Amount and are Not Otherwise Applied;

(10) (a) guarantees of Indebtedness permitted under Section 7.02 and performance guarantees incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of liens on the assets of the Borrower or any Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.06(b)(3), (4), (7), (8), (10), (12), (14), (16), (17), (18), (19), (20), (23), (24) and (25);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or similar assets or the non-exclusive licensing of IP Rights pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed $10,000,000, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *plus* at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower or any Subsidiary in reliance on Section 7.05(b)(20) (such increase shall result in a reduction in availability under Section 7.05(b)(20)); *provided* that if any Investment pursuant to this clause (13) is made in any Person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above (to the extent permitted thereunder) and will cease to have been made pursuant to this clause (13) for so long as such Person continues to be a Subsidiary;

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation pursuant to any Standard Securitization Undertakings (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or any Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of $2,000,000 outstanding at any one time;

(16) loans and advances to employees, directors, officers, members of management and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contacts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Subsidiary to the extent otherwise permitted hereunder;

(23) [reserved];

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) [reserved];

(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) [reserved];

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens"; and

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause.

For purposes of determining compliance with this definition, an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

~~"**Permitted Junior Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a junior lien basis to the Closing Date Term Loans.~~

"**Permitted Liens**" means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers' compensation laws, unemployment insurance, health, disability or employee benefits, other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) securing reimbursement or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations and in respect of costs of litigation) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. or Canadian government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics', laborers', suppliers' or other similar or statutory Liens (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided for, in each ease, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title, inchoate Liens for non-delinquent real property taxes and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person and exceptions on title policies insuring liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (4), (13), (25) or (29) of Section 7.02(b); *provided* that:

(a) Liens securing obligations relating to any Indebtedness permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), *plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness or Preferred Stock incurred under such clause (4) or (13) of Section 7.02(b);

(b) Liens securing obligations relating to Indebtedness permitted to be incurred pursuant to such clause (29) extending only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) [reserved];

(e) [reserved];

(f) [reserved]; and

(g) in the case of Liens securing Indebtedness incurred under clause (25) of Section 7.02(b), together with any Refinancing Indebtedness in respect thereof, such Liens are on assets constituting Collateral and the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement, which shall provide that (i) the Liens on the ABL Priority Collateral securing such Indebtedness may be pari passu or senior to the Liens on the ABL Priority Collateral securing the Closing Date Term Loans and (ii) the Liens on the Term Priority Collateral securing such Indebtedness shall be junior to the Liens on the Term Priority Collateral securing the Closing Date Term Loans.

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (including Liens in effect on the Closing Date securing Indebtedness permitted under Section 7.02(b)(3) but excluding Liens securing Indebtedness permitted under Section 7.02(b)(25)), in each case as set forth on Schedule 7.01;

(9) [reserved];

(10) Liens on property or other assets at the time the Borrower or a Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Subsidiary and including Liens securing Indebtedness incurred pursuant to clause 14(a) of Section 7.02(b); *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation; *provided further* that such Liens are limited to all or part of the same property or assets (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after acquired-property) that secured the obligations to which such Liens relate;

(11) [reserved];

(12) Liens securing (x) Hedging Obligations under Secured Hedge Agreements and (y) obligations in respect of Cash Management Services under Secured Cash Management Agreements;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower's or any Subsidiary's products, technologies or services) that do not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole, and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(15) Liens arising from UCC or PPSA (or equivalent statutes) financing statements or similar public filings regarding operating leases, consignments or accounts entered into by the Borrower and its Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary UCC or PPSA (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Subsidiary; *provided* that such liens securing Indebtedness for borrowed money incurred by a Guarantor and owing to a Subsidiary that is not a Guarantor is expressly subordinated to the Liens securing the Secured Obligations of the Loans of such Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens on Securitization Assets incurred in connection with a Qualified Securitization Facility;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness or Preferred Stock secured by any Lien referred to in clauses (8) or (10) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) that secured the original Lien (*plus* improvements and accessions on such property) and proceeds and products thereof and (b) the Indebtedness or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (7), (8) or (10) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees, defeasance costs, underwriting discounts or similar fees) and premiums (including tender premiums and accrued and unpaid interest), related to such refinancing, refunding, extension, renewal or replacement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens securing obligations in an aggregate principal amount at any one time outstanding not to exceed $15,000,000; *provided*, that if such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Sections 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04 in each case, solely to the extent such Investment or sale, disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(31) ground leases, leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) [reserved];

(33) [reserved];

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof;

(39) [reserved];

(40) agreements to subordinate any interest of the Borrower or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) Liens constituting reservations, limitations, provisos and conditions expressed in any original grants from a Governmental Authority or other grants of real property, or interests therein which do not interfere in any material respect with the use of such real property or the ordinary conduct of the business of the Loan Parties or materially impair the value of the real property which may be subject thereto;

(44) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(45) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with in all material respects;

(46) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(47) zoning by-laws and other land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(48) ~~Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Equal Priority Refinancing Debt or (ii) Permitted Junior Priority Refinancing Debt, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof; *provided*, in each case, such Liens are subject to the Applicable Intercreditor Agreement; and~~**[reserved]; and**

(49) Lien securing obligations relating to any Indebtedness permitted to be incurred pursuant to clause (29) of Section 7.02(b); *provided*, that such Indebtedness is not secured by assets constituting Collateral.

For purposes of determining compliance with this definition, a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest on such Indebtedness.

"**Permitted Parent**" means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

"**Person**" means any individual, corporation, company, ULC, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Plan**" means any material "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"**Planned Expenditures**" has the meaning specified in the definition of Excess Cash Flow.

"**Platform**" has the meaning specified in Section 6.02.

"**Pledged Collateral**" has the meaning specified in the Security Agreement.

"**PPSA**" means the Personal Property Security Act (Ontario), including the regulations thereunder, provided that if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, "PPSA" shall mean the Personal Property Security Act or such other applicable legislation (including the *Civil Code of Quebec* (including the regulations thereunder)) in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

"**Prepayment Premium**" means, with respect to a repayment or prepayment (including following acceleration) of all or any portion of the Closing Date Term Loans occurring (i) prior to the first anniversary of the Closing Date, an amount equal to three percent (3.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, (ii) on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, an amount equal to two percent (2.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, (iii) on and after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, an amount equal to one percent (1.00%) of the aggregate principal amount of the Loans held by such Lender that are being repaid or prepaid, or (iv) on or after the third anniversary of the Closing Date, zero percent (0.00%).

"**Private-Side Information**" means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

"**Pro Forma Financial Statements**" has the meaning specified in Section 5.05(1)(b).

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Term Loan of a given Class of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Exposure of such Class of such Lender at such time and the denominator of which is the aggregate Term Loan Exposure of such Class of all Lenders at such time; *provided*, that, if the Term Loan of a given Class has been paid in full prior to such determination, then solely for purposes of Section 9.08, the Pro Rata Share shall be determined as of the last date that any such Term Loan of a given Class was outstanding.

"**Public Company Costs**" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower's or its Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"**Public Lender**" means Lenders that do not wish to receive Private-Side Information.

"**Public-Side Information**" means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of applicable securities Laws), and (ii) at any time on or after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of applicable securities Laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

"**Purchase Money Obligations**" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement or property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Stock.

"**Qualified Proceeds** " means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"**Qualified Securitization Facility**" means any Securitization Facility with a principal amount of financing extended not to exceed in the aggregate, together with all other Qualified Securitization Facilities, $5,000,000, that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Subsidiary or Securitization Subsidiary and on customary terms for similar transactions (b) all sales or contributions of Securitization Assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower).

"**Qualifying IPO**" means any transaction or series of transactions that results in any common equity interests of the IPO Entity being publicly traded on any United States national securities exchange or over the counter market, or any analogous exchange or market in Canada, Ireland, the United Kingdom or any country of the European Union.

"**Qualifying Lender**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Rating Agencies**" means Moody's and S&P, or if Moody's or S&P (or both) are not making ratings on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody's or S&P (or both), as the case may be.

"**Refinance**" has the meaning assigned in the definition of "Refinancing Indebtedness" and "**Refinancing**" and "**Refinanced**" have meanings correlative to the foregoing.

"**Refinanced Debt**" has the meaning assigned to such term in the definition of "Refinancing Indebtedness."

~~"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Refinancing Loans or Refinancing Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.~~

~~"**Refinancing Commitments**" means any Refinancing Term Commitments.~~

"**Refinancing Indebtedness**" means (x) Indebtedness incurred by the Borrower or any Subsidiary or (y) Preferred Stock issued by any Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("**Refinance**") any Indebtedness or Preferred Stock, including any Refinancing Indebtedness, so long as:

(1) (a) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock, as applicable, being refinanced except to the extent permitted under Section 1.02(10), *plus* (b) any accrued and unpaid interest on, the Indebtedness, the amount of any accrued and unpaid dividends on, the Preferred Stock or the liquidation preference of the Disqualified Stock, *plus* any accrued and unpaid dividends on, the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "**Refinanced Debt**"), *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the "**Incremental Amounts**");

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt;

(3) to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness, such Refinancing Indebtedness is subordinated in right of payment to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to the Applicable Intercreditor Agreement or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Subsidiary that does not secure the Refinanced Debt being Refinanced (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property); *provided* that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) [reserved];

provided further that (x) clause (2) of this definition will not apply to any Refinancing Indebtedness other than Indebtedness, Disqualified Stock and Preferred Stock incurred under clauses (2), (14), (25), (30) and (31) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof) and (y) Refinancing Indebtedness may be incurred in the form of a customary "bridge" or other interim credit facility intended to be refinanced or replaced with long-term indebtedness which does not satisfy the requirements of clause (2) above so long as, subject to customary conditions, as determined in good faith by the Borrower, such "bridge" or other interim indebtedness will either be automatically converted into or required to be exchanged for permanent financing which satisfies the requirements of clause (2) of this definition.

~~"**Refinancing Loans**" means any Refinancing Term Loans.~~

~~"**Refinancing Term Commitments**" means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.~~

~~"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.~~

"**Refunding Capital Stock**" has the meaning specified in Section 7.05(b)(2).

"**Register**" has the meaning specified in Section 10.07(c).

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Rejection Notice**" has the meaning specified in Section 2.05(2)(g).

"**Related Business Assets**" means assets (other than Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Subsidiary in exchange for assets transferred by the Borrower or a Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Subsidiary.

"**Related Indemnified Person**" of an Indemnitee means (1) the respective directors, officers or employees of such Indemnitee and (2) the respective agents of such Indemnitee, in the case of this clause (2), acting at the instructions of such Indemnitee.

"**Related Person**" means, with respect to any Person, (a) any Affiliate of such Person and (b) the respective directors, officers, employees, agents, partners, members, advisors and other representatives of such Person or any of its Affiliates and the successors of each of the foregoing.

"**Release**" means any release, spill, emission, discharge, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment.

~~"**Replaced Loans**" has the meaning specified in Section 10.01.~~

~~"**Replacement Loans**" has the meaning specified in Section 10.01.~~

"**Reportable Event**" means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

"**Required Facility Lenders**" means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of the (a) aggregate principal amount of outstanding Loans under such Facility or Facilities and (b) aggregate unused Commitments under such Facility or Facilities; *provided* that the portion of outstanding Loans and the unused Commitments of any such Facility, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

"**Required Lenders**" means, as of any date of determination, Lenders having more than 50% of the aggregate Term Loan Exposure; *provided* that the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of the "Required Lenders".

"**Responsible Officer**" means, with respect to a Person, the chief executive officer, chief operating officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"**Restricted Investment**" means any Investment other than any Permitted Investment(s).

"**Restricted Junior Debt**" has the meaning specified in Section 7.05(a).

"**Restricted Junior Debt Payment**" has the meaning specified in Section 7.05(a).

"**Restricted Payment**" has the meaning specified in Section 7.05.

"**Retained Excess Cash Flow Amount**" means, at any date of determination, an amount, no less than zero and determined on a cumulative basis, that is equal to the aggregate cumulative sum of Excess Cash Flow that is not required to be applied to make an ECF Payment under Section 2.05(2) for each Excess Cash Flow Period ending after the Closing Date.

"**Reverse TSA**" means the Reverse TSA as defined in the IT Purchase Agreement.

"**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale-Leaseback Transaction**" means any arrangement providing for the leasing by the Borrower or any Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Subsidiary to a Person other than the Borrower or any Subsidiary in contemplation of such leasing.

"**Same Day Funds**" means disbursements and payments in immediately available funds.

"**Sanctioned Person**" means at any time: (a) any Person listed on any Sanctions-related list of designated or blocked persons; (b) any Person resident in, located in, or an entity organized under the laws of, a country or territory that is the subject of comprehensive Sanctions (including, as of the date of this Agreement, Cuba, Iran, North Korea, Syria, and the Crimea region); or (c) any Person majority-owned or controlled by any of the foregoing.

"**Sanctions**" means applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by: (a) the U.S. government, including those administered by OFAC and the United States Department of Commerce; (b) any Canadian Governmental Authority (including those imposed under the *United Nations Act* (Canada), the *Special Economic Measures Act* (Canada), and the *Export and Import Permits Act* (Canada), in each case including the regulations thereunder); (c) the European Union and implemented by its member States; (d) the United Nations Security Council; or (e) Her Majesty's Treasury of the United Kingdom.

"**SEC**" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Cash Management Agreement**" means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Subsidiary and a Cash Management Bank; and designated in writing by the Cash Management Bank and the Borrower to the Administrative Agent as a "Secured Cash Management Agreement."

"**Secured Hedge Agreement**" means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Subsidiary and any Hedge Bank, (b) designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a "Secured Hedge Agreement" and (c) entered into solely for the purpose of hedging either (i) the interest rate payable pursuant to this Agreement or any other Facility or (ii) currency rates between the Dollar and Canadian Dollar.

"**Secured Notes**" means the 9.250% Senior Secured Notes due 2021 of Hot Topic.

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent and/or Collateral Agent from time to time pursuant to Section 9.01(2) or 9.07.

"**Securities Account**" means any securities account maintained by the Borrower or any Subsidiary Guarantors, including any "security accounts" under Article 9 of the UCC. All funds in such Securities Accounts (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Securities Accounts, subject to this Agreement, the Security Agreement and the ABL Intercreditor Agreement.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securitization Assets**" means (a) accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such assets customarily transferred together with such assets in a securitization or receivables financing.

"**Securitization Facility**" means any transaction or series of securitization financings that may be entered into by the Borrower or any Subsidiary pursuant to which the Borrower or any such Subsidiary may sell, contribute, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

"**Securitization Fees**" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility. "**Securitization Subsidiary**" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"**Security Agreement**" means, collectively, the Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

"**Shared Services Agreement**" means that certain Amended and Restated Services Agreement, dated March 21, 2019, between Hot Topic and the Borrower, as amended or modified from time to time in accordance with the terms hereof and thereof.

"**Significant Subsidiary**" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

"**Similar Business**" means (1) any business conducted or proposed to be conducted by the Borrower or any Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Subsidiaries conduct or propose to conduct on the Closing Date.

"**Solicited Discount Proration**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Solicited Discounted Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solicited Discounted Prepayment Notice**" means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(D) substantially in the form of Exhibit L.

"**Solicited Discounted Prepayment Offer**" means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Auction Agent's receipt of a Solicited Discounted Prepayment Notice.

"**Solicited Discounted Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date:

(1) the sum of the liabilities of such Person (including contingent liabilities), on a consolidated basis, does not exceed the present fair saleable value of the present assets of such Person, on a consolidated basis,

(2) the fair value of the property of such Person, on a consolidated basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person, on a consolidated basis,

(3) the capital of such Person, on a consolidated basis, is not unreasonably small in relation to its business as contemplated on such date; and

(4) such Person has not incurred and does not intend to incur, or believe that it will incur, debts including current obligations beyond their ability to pay such debts as they become due (whether at maturity or otherwise).

The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances as of such date, would reasonably be expected to become an actual and matured liability.

"**SPC**" has the meaning specified in Section 10.07(g).

"**Specified Discount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Notice**" means a written notice of the Borrower's Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

"**Specified Discount Prepayment Response**" means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

"**Specified Discount Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Proration**" has the meaning specified in Section 2.05(1)(e)(B)(3).

"**Specified Transaction**" means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an equity offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Subsidiary as discontinued operations (as defined under GAAP),

(3) any Investment that results in a Person becoming a Subsidiary,

(4) [reserved],

(5) any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,

(6) any Asset Sale (a) that results in a Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Subsidiary during the Test Period,

(8) compliance with the Financial Covenants, or

(9) any other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"**Sponsor**" means Sycamore Partners Management, L.P. and any of its respective Affiliates and funds or partnerships managed or advised by it or any of its respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"**Standard Securitization Undertakings**" means representations, warranties, covenants, guaranties and indemnities (including repurchase obligations in the event of a breach of representation and warranty or as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to, the seller) made or provided, and servicing obligations undertaken, by the Borrower or any Subsidiary thereof in connection with a Qualified Securitization Facility.

"**Structuring Advisor**" means KKR Credit Advisors (US) LLC, in its capacity as structuring advisor under this Agreement.

"**Submitted Amount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Submitted Discount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Subordinated Indebtedness**" means any Indebtedness for borrowed money of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, ULC, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise and

(b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"**Subsidiary Guarantor**" means any Guarantor other than Holdings and any other Parent Company.

"**Successor Borrower**" has the meaning specified in Section 7.03(4).

"**Successor Holdings**" has the meaning specified in Section 7.03(5).

"**Supermajority Lenders**" means, as of any date of determination, Lenders having more than 66.67% of the aggregate Term Loan Exposure; *provided* that the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of the "Supermajority Lenders".

"**Supplemental Administrative Agent**" and "**Supplemental Administrative Agents**" have the meanings specified in Section 9.15(1).

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

"**Tax Group**" as defined in Section 7.05(b)(14)(a).

"**Tax Indemnitee**" as defined in Section 3.01(5).

"**Term Borrowing**" means a Borrowing of any Term Loans.

"**Term Commitment**" means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption~~,~~ **or** (ii) ~~a Refinancing Amendment, (iii)~~ an Extension Amendment or (iv) an amendment in respect of Replacement ~~Loans~~. The initial amount of each Term Lender's Term Commitment is its Closing Date Term Commitment or, otherwise, in the Assignment and Assumption~~, Refinancing Amendment,~~ **or** Extension Amendment ~~or amendment in respect of Replacement Loans~~ pursuant to which such Lender shall have assumed its Commitment, as the case may be.

"**Term Facility**" means any Facility consisting of Term Loans or Term Commitments.

"**Term Intercreditor Agreement**" means a Term Intercreditor Agreement substantially in the form of Exhibit G-2 among the Collateral Agent and one or more Debt Representatives and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**Term Lender**" means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

"**Term Loan**" means any Closing Date Term Loan~~, Refinancing Term Loan, or~~ Extended Loan ~~or Replacement Loan~~, as the context may require.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Commitment.

"**Term Note** " means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

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

"**Termination Conditions**" means, (x) the payment in full in cash of the Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and (y) the termination of the Commitments.

"**Test Period**" in effect at any time means the Borrower's most recently ended four consecutive fiscal quarters (taken as one accounting period) for which, subject to Section 1.07(1), financial statements have been delivered pursuant to Section 6.01(1) or (2), as applicable; *provided* that prior to the first date on which financial statements have been furnished, the Test Period in effect will be the period of four consecutive fiscal quarters of the Borrower ended February 2, 2019.

"**Threshold Amount**" means $10,000,000.

"**Total Assets**" means, at any time, the total assets of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower).

"**Total Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Test Period to (b) Adjusted EBITDA of the Borrower for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

"**Traded Securities**" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"**Transaction Expenses**" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

"**Transactions** " means, collectively, (a) the funding of the Closing Date Term Loans, (b) the execution and delivery of the Loan Documents, (c) the consummation of the Closing Date Refinancing, (d) the execution and delivery of the 2019 ABL Amendment and, if applicable, the concurrent borrowing under the ABL Facility, (e) the consummation of any other transactions in connection with the foregoing and (f) the payment of Transaction Expenses.

"**Treasury Capital Stock**" has the meaning assigned to such term in Section 7.05(b)(2)(a).

"**Trust Account**" means any accounts or trusts used solely to hold Trust Funds.

"**Trust Funds**" means cash, Cash Equivalents or other assets comprised of: (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party's employees; (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer's share thereof)); and (3) any other funds which Holdings, the Borrower or any of their Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Subsidiary of the Borrower.

"**Type**" means, with respect to a Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"**ULC**" means an unlimited company, unlimited liability corporation or unlimited liability company governed by the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta) or the *Business Corporations Act* (British Columbia) or any other present or future Laws governing ULCs in Canada.

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"**United States**" and "**U.S**." mean the United States of America.

"**United States Tax Compliance Certificate**" has the meaning specified in Section 3.01(3)(b)(iii).

"**U.S. Lender**" means any Lender that is not a Foreign Lender.

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**VCOC Rights Letter**" means that certain letter agreement between the Borrower and HPS dated as of the date hereof in the form previously agreed between HPS and the Borrower.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied by* the amount of such payment, *by*

(2) the sum of all such payments; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "**Applicable Indebtedness**"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"**wholly owned**" means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors' qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

"**Withdrawal Liability**" means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such term is defined in Part I of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term "including" is by way of example and not limitation.

(5) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(6) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(7) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(8) The word "or" is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words "exists", "is continuing" or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived. If, prior to the taking of any action under Section 8.02 (or the occurrence of any event set forth in the proviso thereto), any Default or Event of Default occurs due to (i) the failure by any Loan Party to take any action by a specified time, such Default or Event of Default shall be deemed to have been cured at the time, if any, that the applicable Loan Party takes such action or (ii) the taking of any action by any Loan Party that is not then permitted by the terms of this Agreement or any other Loan Document, such Default or Event of Default shall be deemed to be cured on the earlier to occur of (x) the date on which such action would be permitted at such time to be taken under this Agreement and the other Loan Documents pursuant to an applicable amendment or waiver permitting such action and (y) the date on which such action is unwound or otherwise modified to the extent necessary for such revised action to be permitted at such time by this Agreement and the other Loan Documents; *provided* that an Event of Default resulting from the failure to deliver a notice pursuant to such Section 6.03(1) shall cease to exist and be cured in all respects if the Default or Event of Default giving rise to such notice requirement shall have ceased to exist and/or be cured.

(10) For purposes of determining compliance with any Section of Article VII, in the event that any Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time, shall be permitted under one or more of such clauses within the applicable Section as determined by the Borrower in its sole discretion at such time. For purposes of determining compliance with the incurrence of any ~~Credit Agreement Refinancing Indebtedness or~~ Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of ~~Credit Agreement Refinanced Debt or~~ Refinanced Debt, ~~respectively,~~ the Borrower and Subsidiaries may incur an incremental principal amount of ~~Credit Agreement Refinancing Indebtedness or~~ Refinancing Indebtedness in such refinancing to the extent that the excess portion of the ~~Credit Agreement~~ Refinancing ~~Indebtedness or Refinancing~~ Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement (*provided* that (1) any additional Indebtedness referenced in this sentence satisfies the other applicable requirements of the definition of ~~Credit Agreement~~ Refinancing Indebtedness ~~or Refinancing Indebtedness, as applicable~~ (with such additional amounts incurred constituting a utilization of the relevant basket or exception contained in Section 7.02(b) pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 7.01). For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio or Basket, if on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Subsidiaries.

Section 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable). When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

Section 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio and the Total Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.07. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements of the Borrower have been delivered pursuant to Section 6.01(1) or (2), as applicable.

(2) For purposes of calculating any financial ratio or test (or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Adjusted EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.07 as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, synergies and operating expense reductions resulting from or related to any such Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than six fiscal quarters after the date of any such Specified Transaction (calculated on a *pro forma* basis

as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are (i) reasonably identifiable and projected in the good faith judgment of the Borrower to result from such actions and (ii) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than six fiscal quarters after the date of such Specified Transaction, (b) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Adjusted EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period; *provided* that the foregoing cap shall not apply to adjustments made in accordance with Regulation S-X; *provided*, *further*, that amounts added back pursuant to this clause (3), when combined with ~~adjustments pursuant to clauses (l) and (n) of the definition of "Adjusted EBITDA" and clause (1) of the definition of "Consolidated Net Income"~~**all other Combined Adjustment Amounts for such period,** shall not exceed 22.5% of Adjusted EBITDA for such period calculated prior to giving effect to all such add-backs and adjustments, and being calculated on a pro forma basis.

(4) In the event that (a) the Borrower or any Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the First Lien Net Leverage Ratio or Total Net Leverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(5) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the First Lien Net Leverage Ratio and/or Total Net Leverage Ratio, is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Subsidiary may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, no *pro forma* effect shall be given to any discontinued operations (and the Adjusted EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which financial statements of the Borrower have been delivered pursuant to Section 6.01(1) or (2), as applicable, on or prior to the relevant date of determination.

(8) [Reserved].

(9) Notwithstanding anything to the contrary herein, other than with respect to dividends or distributions that constitute Restricted Payments permitted hereunder, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a covenant of this Agreement that does not require compliance with a financial ratio or test (including pro forma compliance with any First Lien Net Leverage Ratio test, any Total Net Leverage Ratio test and/or any other financial ratio or test) (any such amounts, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement in the same covenant that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence Based Amounts**"), it is understood and agreed that the Fixed Amounts (and any cash proceeds thereof) be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence with respect to the same covenant.

Section 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the Available Amount immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must constitute a permitted use of the Available Amount.

Section 1.09 LIBOR Discontinuation. If at any time the Administrative Agent or the Borrower determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 3.03 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 3.03 have not arisen but the supervisor for the administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the applicable LIBOR Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the appropriate LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, written notice from the Required Lenders stating that such Required Lenders object to such amendment.

Section 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the dollar amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the First Lien Net Leverage Ratio and/or the Total Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(3) For purposes of determining compliance under any Basket under Article VII or VIII, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating net income in the Borrower's annual financial statements delivered pursuant to Section 6.01(1); *provided, however*, that the foregoing shall not be deemed to apply to the determination of any amount of Indebtedness. For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the Dollar equivalent of the principal amount of Indebtedness denominated in a foreign currency being incurred shall be calculated based on the exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such 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 extended, replaced, refunded, refinanced, renewed or defeased.

Section 1.11 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Commitments and Borrowings

Section 2.01 The Loans. Subject to the terms and conditions set forth in Section 4.01 hereof, each Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date Term Loans denominated in Dollars in an aggregate principal amount not to exceed such Term Lender's Closing Date Term Commitment on the Closing Date. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. The Closing Date Term Loans may be Base Rate Loans or LIBOR Rate Loans, as further provided herein. No Term Lender will fund any portion of the Term Loans with "plan assets" (within the meaning of the Department of Labor regulation located at 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA).

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Term Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent (*provided* that the notice in respect of the initial Term Borrowing on the Closing Date, or in connection with any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on the consummation of the Closing Date Refinancing or closing of such Permitted Acquisition or other transaction, as applicable). Each such notice must be received by the Administrative Agent not later than 1:00 p.m., New York time, (a) three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBOR Rate Loans or any conversion of Base Rate Loans to LIBOR Rate Loans and (b) one (1) Business Day prior to the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (a) above may be delivered one (1) Business Day prior to the Closing Date in the case of the Closing Date Term Loans. Each notice by the Borrower pursuant to this Section 2.02(1) must be made by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in ~~Sections 2.15 and~~**Section** 2.16, each Borrowing of, conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in ~~Sections 2.15 and~~**Section** 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Each Committed Loan Notice shall specify:

(i) whether the Borrower is requesting a Term Borrowing, a conversion of Term Loans from one Type to the other or a continuation of LIBOR Rate Loans,

(ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),

(iii) the principal amount of Loans to be borrowed, converted or continued,

(iv) [reserved],

(v) the Class and Type of Loans to be borrowed or to which existing Term Loans are to be converted,

(vi) if applicable, the duration of the Interest Period with respect thereto and

(vii) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as LIBOR Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a LIBOR Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of LIBOR Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of LIBOR Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent by wire transfer in Same Day Funds to the Administrative Agent's Account not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 2:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 for the Borrowing on the Closing Date, and upon receipt of all requested funds, the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(3) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBOR Rate Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Lenders under the applicable Facility may require by notice to the Borrower that no Loans may be converted to or continued as LIBOR Rate Loans~~.~~ **(unless such Event of Default is an Event of Default under Section 8.01(1) or Section 8.01(6), in which case any LIBOR Rate Loan shall automatically convert to a Base Rate Loan on the last day of the Interest Period then in effect at the time of the occurrence of such Event of Default under Section 8.01(1) or Section 8.01(6)).**

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. The determination of the LIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the prime rate used in determining the Base Rate promptly following the public announcement of such change.

(5) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than 6 Interest Periods in effect unless otherwise agreed in writing between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to ~~a Refinancing Amendment,~~ an Extension Amendment ~~or an amendment in respect of Replacement Loans~~, the number of Interest Periods otherwise permitted by this Section 2.02(5) shall increase by three (3) Interest Periods for each applicable Class so established.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received written notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loan, prior to 1:00 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may (but shall be under no obligation to), in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon written notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans in whole or in part, with any applicable Prepayment Premium as provided in Section 2.18; *provided* that

(i) such notice must be received by the Administrative Agent not later than 3:00 p.m., New York time, (A) three (3) Business Days prior to any date of prepayment of LIBOR Rate Loans and (B) one (1) Business Day prior to any date of prepayment of Base Rate Loans;

(ii) any partial prepayment of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with, in the case of a LIBOR Rate Loan, any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(b) [Reserved].

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(1)(a) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(d) Each prepayment in respect of any Term Loans (other than with respect to Extended Loans) pursuant to this Section 2.05(1) may be applied to any Class of Term Loans as directed by the Borrower. Voluntary prepayments of any Class of Term Loans permitted hereunder shall be applied in a manner determined at the discretion of the Borrower and specified in the notice of prepayment; *provided* that the Borrower may prepay Term Loans of any Term Loan Class pursuant to this Section 2.05 without any requirement to prepay Extended Loans that were converted or exchanged from such Term Loan Class. Subject to Section 2.16(3), in the event that the Borrower does not specify the order in which to apply prepayments to reduce scheduled installments of principal or as between Classes of Term Loans, the Borrower shall be deemed to have elected that such proceeds be applied to reduce the scheduled installments of principal in direct order of maturity on a *pro rata* basis among Term Loan Classes.

(e) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Event of Default has occurred and is continuing or shall occur as a result thereof, (y) no offer pursuant to this Section 2.05(e) is made on a non-pro rata basis and no fees, consideration or other economics are offered or given on a non-pro rata basis in connection with any transaction pursuant to this Section 2.05(e) and (z) no proceeds of ABL Loans are used for this purpose, any Borrower Party may prepay the outstanding Term Loans (which Term Loans shall, for the avoidance of doubt, be automatically and

permanently canceled immediately upon such purchase or prepayment) without premium or penalty on the following basis:

(A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the "**Discounted Term Loan Prepayment**"), in each case made in accordance with this Section 2.05(1)(e) and without premium or penalty.

(B) ~~(1)~~ **(1)** any Borrower Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the "**Specified Discount Prepayment Amount**") with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the "**Specified Discount**") of such Term Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than $1,000,000 and whole increments of $500,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Specified Discount Prepayment Response Date**").

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a "**Discount Prepayment Accepting Lender**"), the amount and the Classes of such Lender's Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2) above*; provided* that if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the "**Specified Discount Proration**"). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) and each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) ~~1.~~ **(1)** Any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than $5,000,000 and whole increments of $1,000,000 in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of

such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) ~~(1)~~ The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Borrower Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the **"Applicable Discount"**) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a **"Participating Lender"**).

(3) ~~(2)~~ If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender's Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the **"Identified Participating Lenders"**) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction

Agent made in its sole reasonable discretion) will calculate such proration (the "**Discount Range Proration**"). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) ~~(1)~~ **(1)** Any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Term Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than $1,000,000 and whole increments of $500,000 in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender and the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Term Lenders (the "**Solicited Discounted Prepayment Response Date**"). Each Term Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the "**Offered Discount**") at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the "**Offered Amount**") such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Borrower Party (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the "**Acceptable Discount**"), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Borrower Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the "**Acceptance Date**"), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent) setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the "**Discounted Prepayment Determination Date**"), the Auction Agent will determine (in consultation with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the "**Acceptable Prepayment Amount**") to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(D). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a "**Qualifying Lender**"). The applicable Borrower Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender's Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the

Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the "**Identified Qualifying Lenders**") shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the "**Solicited Discount Proration**"). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) the Administrative Agent (to the extent the Administrative Agent is not the Auction Agent) and each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(F) If any Term Loan is prepaid in accordance with subsections (B) through (D) above, a Borrower Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, by wire transfer to the Administrative Agent's Account in immediately available funds not later than 12:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) and Lenders as specified by the applicable Borrower Party in the applicable offer. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e). The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the

Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(1)(e), the relevant Borrower Party shall make a representation to the assigning or assignee Term Lenders, as applicable, that it does not possess material non-public information with respect to the Borrower and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders that have elected not to receive such information) or shall make a statement that such representation cannot be made.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(I) Each of the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.

(J) Each Borrower Party shall have the right, by written notice to the Auction Agent (with a copy to the Administrative Agent) (to the extent the Administrative Agent is not the Auction Agent), to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(K) The Administrative Agent (i) shall not be required to serve as the Auction Agent or have any other obligations to participate in (other than mechanical administrative duties), or facilitate any Discounted Term Loan Prepayment unless it is reasonably satisfied with the terms and restrictions thereof (for the avoidance of doubt, the Administrative Agent shall not be required to serve as Auction Agent whether or not it is satisfied with the terms and restrictions thereof) and (ii) shall not have any obligation to participate in, arrange, sell or otherwise facilitate, and will have no liability in connection with, any open market repurchases by Holdings, the Borrower or any of its Subsidiaries. If the Administrative Agent agrees to serve as Auction Agent, all provisions of Article IX and Sections 8.03, 10.04, and 10.05 herein shall inure to the benefit of the Auction Agent and shall be binding upon all Loan Parties and all Secured Parties in connection with this Agreement and the other Loan Documents as if all references herein and therein to "Administrative Agent" were to "Auction Agent".

(2) Mandatory.

(a) Within five (5) Business Days after financial statements are required to be delivered pursuant to Section 6.01(1) and the related Compliance Certificate is required to be delivered pursuant to Section 6.02(1), commencing with the delivery of financial statements for the fiscal year ending February 1, 2020, for each Excess Cash Flow Period, the Borrower shall, subject to clause (g) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 75% (such percentage as it may be reduced as described below, the "**ECF Percentage**") of Excess Cash Flow in excess of $2,000,000, if any, for such Excess Cash Flow Period covered by such financial statements (such payment, the "**ECF Payment**") *minus* the sum of all voluntary prepayments of:

(i) Term Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) but only to the extent repaid and/or cancelled (in an amount, in each case, in the case of prepayments pursuant to Section 2.05(1)(e) equal to the discounted amount actually paid in respect of the principal amount of such Term Loans and only to the extent, in each case, that such Loans have been cancelled) (including prepayments made after the end of the fiscal year covered by the relevant financial statements but prior to the making of such ECF Payment (such payments, the "**After Year-End Payment**"),

(ii) ~~Credit Agreement Refinancing Indebtedness, to the extent secured on a *pari passu* basis with the Closing Date Term Loans (including, to the extent prepaid pursuant to an After Year-End Payment),~~**[reserved],**

(iii) [reserved], and

(iv) Indebtedness in respect of the ABL Facility (including any Refinancing Indebtedness in respect thereof) or any Indebtedness under any other revolving facility that is secured on a *pari passu* basis with ABL Facility or the Closing Date Term Loans (in each case of this clause (iv), to the extent accompanied by a permanent reduction in the corresponding ABL Commitments or other revolving commitments) (in each case, including to the extent prepaid pursuant to an After Year-End Payment),

in the case of each of the immediately preceding clauses (i), (ii), (iii) and (iv), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or in connection with an After Year-End Payment, and in each case to the extent such prepayments are not funded with the proceeds of Funded Debt (other than borrowings under the ABL Facility), any proceeds from any ABL Cure Amount or any Cure Amount;

provided that the ECF Percentage for any fiscal year shall be (i) 50% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.75 to 1.00 and (ii) 25% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.00 to 1.00;

(and it being understood that following the making of any After Year-End Payment, (i) the First Lien Net Leverage Ratio shall be recalculated giving *pro forma effect* to such After Year-End Payment as if such payment were made during the fiscal year of the applicable ECF Payment and the ECF Percentage for purposes of making such ECF Payment shall be determined by reference to the First Lien Net Leverage Ratio after giving effect to such recalculation and (ii) if such After Year-End Payment is taken into account for such calculation, the After Year-End Payment shall not be applied to the calculation of the First Lien Net Leverage Ratio for purposes of determining the ECF Percentage for any subsequent ECF Payment)~~;~~.

~~*provided*, *further*, that:~~

~~(A) if at the time that any such prepayment would be required, the Borrower (or any Subsidiary) is required to discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such Excess Cash Flow on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time) but not on a greater than pro rata basis with respect to the then outstanding Term Loans;~~

~~(B) the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Excess Cash Flow shall be allocated to the Term Loans in accordance with the terms hereof; and~~

~~(C) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).~~

(b) (i) If (x) the Borrower or any Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Subsidiary of Net Proceeds (other than ABL Priority Collateral), the Borrower shall, subject to the ABL Intercreditor Agreement, prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds; *provided* that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii)~~; *provided*, *further*, that:~~.

~~(A) if at the time that any such prepayment would be required, the Borrower (or any Subsidiary) is required to discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such Net Proceeds on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time);~~

~~(B) the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof; and~~

~~(C) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof; *provided*, *further*, that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii).~~

(ii) Subject to the ABL Intercreditor Agreement, with respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in the business of the Borrower and its Subsidiaries (including, Permitted Acquisitions (and similar Investments) and capital expenditures) within (x) twelve (12) months following receipt of such Net Proceeds or (y) if the Borrower or any Subsidiary enters into a legally binding commitment to reinvest such Net Proceeds within twelve (12) months following receipt thereof, within the later of (A) twelve (12) months following receipt thereof and (B) one hundred-eighty (180) days of the date of such legally binding commitment; *provided* that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.05.

(c) Within five Business Days following the receipt by the Borrower of the net proceeds in respect of a Cure Amount, the Borrower shall prepay the Term Loans in an amount equal to the Cure Amount, together with accrued and unpaid interest and other amounts due in respect of the Term Loans.

(d) If the Borrower or any Subsidiary incurs or issues any Indebtedness ~~(A)~~ not expressly permitted to be incurred or issued pursuant to Section 7.02(b) ~~or (B) that constitutes Credit Agreement Refinancing Indebtedness or Refinancing Loans~~, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Net Proceeds.

(e) Except as otherwise set forth in any ~~Refinancing Amendment or~~ Extension Amendment,

(i) each prepayment of Term Loans required by Sections 2.05(2)(a) through (d) shall be applied to each Class of Term Loans then outstanding on a *pro rata* basis or a less than *pro rata* basis (but not greater than *pro rata* basis) with any other Term Loans (in each case, other than pursuant to a refinancing);

(ii) with respect to each Class of Loans, each prepayment pursuant to clauses (a) through (d) of Section 2.05(2) shall be applied to remaining scheduled installments of principal thereof following the date of prepayment in direct order of maturity; and

(iii) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment;

provided that with respect to the allocation of such prepayments under this clause (e) between a Class of existing Loans and a Class of Extended Loans, to the extent that the Borrower may allocate between such classes, the Borrower may allocate such prepayments as the Borrower may specify, subject always to the limitation that the Borrower may not allocate to such Extended Loans any such mandatory prepayment (other than in the case of a refinancing of Extended Loans) unless such prepayment under this clause (e) is accompanied by at least a *pro rata* prepayment, based upon the applicable remaining scheduled installments of principal due in respect thereof, of the Term Loans of the Class, if any, from which such Extended Loans were converted or exchanged (or such Term Loans of such existing Class have otherwise been repaid in full).

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to this Section 2.05(2) by 3:00 p.m. at least four (4) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment, the subsection of this Agreement pursuant to which such prepayment is being made and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment or other applicable share provided for under this Agreement. Each Term Lender may reject all or a portion of its Pro Rata Share, or other applicable share provided for under this Agreement, of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a) and (b) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 3:00 p.m., New York time, at least two (2) Business Days prior to the scheduled date of such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds remaining shall be offered to all Lenders which have not declined proceeds of the applicable prepayment event (on a *pro rata* basis as among such non-declining Lenders) and, to the extent that any such non-declining Lender does not accept such offer by 3:00 p.m., New York time, at least one (1) Business Day prior to the date of such prepayment, such remaining Declined Proceeds shall be retained by the Borrower and shall increase the Available Amount pursuant to clause (6) of the definition thereof or may be otherwise applied as set forth herein.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a "**Foreign Asset Sale**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**"), or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States or Canada, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) but may be retained by the applicable Foreign

Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States or Canada (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions available under by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all or the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary.

(i) Interest, Funding Losses, etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a LIBOR Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such LIBOR Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of LIBOR Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such LIBOR Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that:

(a) any such notice shall be received by the Administrative Agent by 3:00 p.m. New York time three (3) Business Days prior to the date of termination or reduction, and

(b) any such partial reduction shall be in an aggregate amount of $1,000,000 or any whole multiple of $500,000 in excess thereof or, if less, the entire amount thereof.

(2) Mandatory. The Closing Date Term Commitment of each Term Lender on the Closing Date shall be automatically and permanently reduced to $0 upon the making of such Lender's Closing Date Term Loans to the Borrower pursuant to Section 2.01.

(3) Application of Commitment Reductions. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07).

Section 2.07 Repayment of Loans.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the last Business Day of each fiscal quarter (with each such fiscal quarter end being set forth on Schedule 1.01(3)) until the Maturity Date, commencing with the last Business Day of the first full fiscal quarter following the Closing Date, in equal quarterly installments, an amount equal to the following:

(a) for each of the first four full fiscal quarters following the Closing Date, 0.75% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05),

(b) for each of the eight full fiscal quarters occurring thereafter, an aggregate principal amount equal to 1.25% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05),

(c) for each fiscal quarter occurring thereafter, an aggregate principal amount equal to 1.875% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and

(d) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date.

Section 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBOR Rate, for such Interest Period, *plus* the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of an Event of Default, the Borrower shall pay interest on **all** principal ~~due~~**and all other amounts outstanding** hereunder at the direction (which direction may be provided retroactively to the extent not applied following the occurrence of such Event of Default so long as such Event of Default is continuing) of the Required Lenders (unless such Event of Default is an Event of Default under Section 8.01(1) or Section 8.01(6), in which case the Default Rate shall automatically accrue upon the occurrence of such Event of Default under Section 8.01(1) or Section 8.01(6)), ~~the Borrower shall pay interest on all amounts due hereunder,~~ in each case at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(4) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest for any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day, 365-day or 366-day year, the yearly rate of interest to which the rate used in such calculation is equivalent to the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(5) In no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, R.S.C. 1985, c. C-46, as the same shall be amended, replaced or re-enacted from time to time) payable (whether by way of payment, collection or demand) by any Canadian Loan Party to the Administrative Agent or the Lenders under this Agreement or any other Loan Document exceed the effective annual rate of interest on the "credit advanced" (as defined in that section) under this Agreement or such other Loan Document lawfully permitted under that section and, if any payment, collection or demand pursuant to this Agreement or any other Loan Document in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by the mutual mistake of the Administrative Agent, the Lenders and such Canadian Loan Party, with such "interest" deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the Criminal Code Section, to result in a receipt by the Administrative Agent and the Lenders of interest at a rate not in contravention of the Criminal Code Section, such adjustment to be effected, to the extent necessary, as follows by the Administrative Agent: firstly, by reducing the amounts or rates of interest required to be paid to the Lenders; and then, by reducing any fees, charges, commissions, premiums, expenses and other amounts required to be paid to the Lenders which would constitute "interest" under the Criminal Code Section. Notwithstanding the foregoing, and after giving effect to all such adjustments, if the Administrative Agent or the Lenders shall have received an amount in excess of the maximum permitted by the Criminal Code Section, then the applicable Canadian Loan Party shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Administrative Agent (but solely limited to the funds received from Lenders) and the Lenders in an amount equal to such excess.

(6) Any provision of this Agreement or any other Loan Document that would oblige any Canadian Loan Party to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property or hypothec on immovable that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Canadian Loan Party, who shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.

Section 2.09 Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified (including the fees due and owing to the Administrative Agent and Collateral Agent pursuant to the Administrative Agent Fee Letter). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed in writing between the Borrower and the applicable Agent).

Section 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(1) The Term Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c) and Section 1.163-5(b) of the proposed United States Treasury Regulations, as applicable, as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Term Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender, the Borrower shall execute and deliver to such Lender a Term Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) [Reserved].

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(1), and by each Lender in its account or accounts pursuant to Section 2.11(1), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(1) All payments hereunder to be made by the Borrower shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, by wire transfer to the Administrative Agent's Account for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in

like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, may, in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, in writing prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 12:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(4) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Term Borrowing set forth in Section 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(5) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

(6) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(7) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein (including with respect to any discounted prepayment of Term Loans pursuant to Section 2.05(2)(e) or 2.05(2)(g)), if any Lender of any Class shall obtain payment or any other form of consideration in respect of any principal of or interest on account of the Loans of such Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact in writing, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 [Reserved].

Section 2.15 ~~Refinancing Amendments~~**[Reserved]**.

~~(1) Refinancing Loans. At any time after the Closing Date, the Borrower or any Subsidiary Guarantor may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Refinancing Loans or Refinancing Commitments in each case pursuant to a Refinancing Amendment.~~

~~(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such conditions precedent as may be requested by the providers of the applicable Refinancing Loans; *provided* that upon the effectiveness of any Refinancing Amendment, no Event of Default shall have occurred and be continuing or result therefrom. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Refinancing Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15 and to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans). A Refinancing Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including by amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including by amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Refinancing Amendment), (c) provide that the lenders providing such Refinancing Loans may participate ratably in any voluntary prepayments made by the Borrower pursuant to Section 2.05(2) and (d) to the extent the Borrower requests to make such Refinancing Loans part of another Class of Term Loan then existing, make other amendments to the terms of any existing Term Loans, in the case of each clause (a), (b), (c) and (d), so that such Refinancing Term Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are not adverse to the applicable existing Term Loan Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Refinancing Loans.~~

~~(3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Persons providing the applicable Refinancing Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15. This Section 2.15 supersedes any provision in this Agreement to the contrary (including Section 10.01).~~

~~(4) Providers of Refinancing Loans. Refinancing Loans may be provided by any existing Lender (it being understood that no exiting Lender shall have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender on terms permitted by this Section 2.15; *provided*, that the Borrower shall offer each existing Lender an opportunity to participate in such Refinancing Loans on~~

~~a pro rata basis; *provided, further*, that, other than with respect to existing Lenders, the Administrative Agent shall have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Refinancing Loans or Refinancing Commitments if such consent would be required under Section 10.07(b)(iii) for an assignment of Loans or Commitments to such Person.~~

Section 2.16 Extensions of Loans.

(1) Extension Offers. Pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and otherwise modify the terms of such Loans or Commitments pursuant to the terms set forth in an Extension Offer (each, an "**Extension**," and each group of Loans or Commitments so extended, as well as any Loans of the same Class not so extended, each being a separate "**tranche**" for purposes of this Section 2.16). Each Extension Offer will specify the minimum amount of Loans or Commitments with respect to which an Extension Offer may be accepted, which will be an integral multiple of $1,000,000 and an aggregate principal amount that is not less than $5,000,000, or if less, (a) the aggregate principal amount of such Loans outstanding or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans or Commitments offered to be extended pursuant to such Extension Offer, then the Loans or Commitments of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any "most favored nation" pricing provisions or any financial ratio tests. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness, including a condition that a minimum amount of Loans or Commitments of any or all applicable tranches be tendered~~.~~ **; *provided* that, to the extent the terms and conditions of any Extension Offer include the Loans that are the subject of such Extension Offer being extended in an aggregate principal amount that constitutes a discount to the par value thereof, the amount of Indebtedness able to be incurred under this Agreement shall be reduced by the amount of such discount.**

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (each, an "**Extension Amendment**") as may be necessary or appropriate in order to effect the provisions of this Section 2.16, establish new tranches in respect of Extended Loans and Extended Commitments and such amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such Extended Loans and Extended Commitments. An Extension Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including by amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including by amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Extension Amendment) and (c) to the extent the Borrower Request to make such Extended Loans part of another Class of Term Loans then existing, make other amendments to the terms of any such existing Term Loans, in the case of each clause (a), (b) and (c), so that such Extended Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are not adverse to the

existing Term Loan Lenders (as determined in good faith by the Borrower) and no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom. This Section 2.16 supersedes any provision(s) in Section 2.13 or 10.01 to the contrary. Except (1) as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment and (2) upon the effectiveness of an Extension Amendment, no Event of Default pursuant to Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement. Any Lender of an existing Class of Term Loans that elects not to participate in Extended Loans or Extended Commitments of such Class of Term Loans shall be referred to herein as a "**Non-Extended Lender**".

(3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Loans and Extended Commitments will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:

(a) the aggregate principal amount of Extended Loans or Extended Commitments shall not exceed the aggregate principal amount of the Loans or Commitments that are the subject of such Extension Offer, *plus* accrued interest, fees, premiums (if any) and penalties thereon and fees and expenses incurred in connection with such Extension Offer;

(b) ~~(a)~~ the final maturity date of such Extended Loans and Extended Commitments will be no earlier than the Latest Maturity Date applicable to the Loans or Commitments subject to such Extension Offer;

(c) ~~(b)~~ the Weighted Average Life to Maturity of any Extended Loans that are Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;

(d) ~~(c)~~ any Extended Loans that are Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments of the Term Loans (in each case, other than pursuant to a refinancing) and may participate on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) in any voluntary prepayments of the Term Loans;

(e) ~~(d)~~ such Extended Loans and Extended Commitments are not secured by any assets or property that does not constitute Collateral and may not be secured on a senior basis to the existing Term Loans;

(f) ~~(e)~~ such Extended Loans and Extended Commitments are not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party; and

(g) ~~(f)~~ the covenants and events of default applicable to Extended Loans or Extended Commitments are substantially identical to, or, taken as a whole, no more favorable to the Lenders providing such Extended Loans or Extended Commitments than, those applicable to the Loans or Commitments subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that this clause (~~f~~g) will not apply:

(A) if an Extension Offer is made with respect to all the Loans or Commitments of a particular Class and all such Loans or Commitments are accepted in such Extension Offer and amended pursuant to the applicable Extension Amendment or

(B) to any of the following:

(1) terms addressed in the preceding clauses (a) through (ef),

(2) interest rate, fees, funding discounts and other pricing terms,

(3) redemption, prepayment or other premiums, and

(4) covenants and events of default applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Any Extended Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or condition), the Borrower and the applicable Extending Lender. The transactions contemplated by this Section 2.16 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.16 will not apply to any of the transactions effected pursuant to this Section 2.16.

Section 2.17 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such

payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(2) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18 Call Protection. In the event that all or any portion of the Closing Date Term Loans are repaid, prepaid or accelerated for any reason, including as a result of any mandatory prepayments, voluntary prepayments, payments made following acceleration of the Loans or after an Event of Default (other than mandatory prepayments pursuant to Section 2.05(2)(a) or (c) or amortization payments pursuant to Section 2.07) the Borrower shall pay to the Administrative Agent, for the benefit of Lenders holding such Closing Date Term Loans as an inducement for making the Closing Date Term Loans (and not as a penalty) an amount equal to the Prepayment Premium, which Prepayment Premium shall be fully earned, and due and payable, on the date of such payment or prepayment, or on the date such payment or prepayment is required to be made, as applicable, and non-refundable when made; *provided*, that no Prepayment Premium shall be payable with respect to the first $50,000,000 of prepayments of Closing Date Term Loans that occur in connection with a Qualifying IPO. If the Loans are accelerated or otherwise become due prior to their maturity date, in each case, as a result of an Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the amount of principal of and premium on the Loans that becomes due and payable shall equal 100% of the principal amount of the Loans plus the Prepayment Premium in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Lender as the result of the early prepayment and the Borrower agrees that it is reasonable under the circumstances currently existing. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

ARTICLE III

Taxes, Increased Costs Protection and Illegality

Section 3.01 Taxes.

(1) Except as required by applicable Law, any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent (including, for the avoidance of doubt, the Administrative Agent, if applicable) is required by applicable Law (as determined in the good faith discretion of such Loan Party or withholding agent) to make any deduction or withholding on account of any Taxes from any such payment under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent in writing of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall be entitled to make such deduction or withholding and shall pay any amounts deducted or withheld to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), the Lender or the Agent (as applicable) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which any Loan Party is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which any Loan Party is required by this Section 3.01 to pay, the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any properly completed and executed documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its inability to do so. Notwithstanding anything to the contrary herein, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(3)(a), (b) and (c) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) two properly completed and duly signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H-1 (any such certificate, a "**United States Tax Compliance Certificate**") and (B) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms), or

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, Form W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or H-3, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of such beneficial owner).

In addition, any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or Administrative Agent), two properly completed and duly signed copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding Tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 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 applicable 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. Solely for purposes of this paragraph, the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 3.01, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(4) In addition to the payments by a Loan Party required by Section 3.01(2), the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee or required to be withheld or deducted from a payment to such Tax Indemnitee attributable to any payment under or with respect to any Loan Document, and any Other Taxes paid or payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this paragraph (6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) The agreements in this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(8) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Non-Excluded Taxes or Other Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Non-Excluded Taxes or Other Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were

correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (8).

Section 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the U.S. money market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue LIBOR Rate Loans or to convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower in writing that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate) and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component, thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. If the Administrative Agent reasonably determines that for any reason in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof that:

(1) Dollar deposits are not being offered to banks in the U.S. money market for the applicable amount and Interest Period of such LIBOR Rate Loan,

(2) adequate and reasonable means do not exist for determining the LIBOR Rate (based upon methodology set forth in the definition thereof) for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or

(3) the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Required Lenders (in consultation with the Borrower) will so notify the Administrative Agent in writing and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain LIBOR Rate Loans, as the case may be, shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves.

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender or the Administrative Agent to any Tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the Canadian money market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender that is not otherwise accounted for in the definition of "LIBOR Rate" or this clause (c);

and the result of any of the foregoing shall be to increase the cost to such Lender or Administrative Agent of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the LIBOR Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or Administrative Agent, or to reduce the amount of any sum received or receivable by such Lender or Administrative Agent hereunder (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender or Administrative Agent setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender or Administrative Agent such additional amount or amounts as will compensate such Lender or Administrative Agent for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender or Administrative Agent under this Section 3.04(1) so long as it is such Lender's or Administrative Agent's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any LIBOR Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a LIBOR Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such LIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the "floor" specified in the proviso to the definition of "LIBOR Rate".

Section 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue LIBOR Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into LIBOR Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of LIBOR Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's LIBOR Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Rate Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding LIBOR Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred-eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make LIBOR Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(1), (3) any Lender is a Non-Consenting Lender or Non-Extended Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon written notice to such Lender and the Administrative Agent:

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 and any Prepayment Premium pursuant to Section 2.18 that would otherwise be owed in connection therewith) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Term Notes evidencing such Loans to the Borrower (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Term Notes shall not render such sale and purchase (and the corresponding assignment) invalid and upon payment to the Lender being replaced of the amounts set forth in clause (ii) (and the payment to the Administrative Agent set forth in clause (i)) such assignment shall be recorded in the Register and the Term Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans and Commitments, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws; and

(vii) if the Administrative Agent is a Lender hereunder, the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date (including any Prepayment Premium pursuant to Section 2.18 that would otherwise be owed in connection therewith); *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender**."

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment, satisfaction or discharge of all other Obligations under this Agreement and resignation of the Administrative Agent.

ARTICLE IV

Conditions Precedent to Term Borrowings

Section 4.01 Conditions to Term Borrowings on Closing Date. The obligation of each Lender to make the Closing Date Term Loans on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent:

(1) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals unless otherwise reasonably agreed by the Administrative Agent) unless otherwise specified, each properly executed, as applicable, by a Responsible Officer of the signing Loan Party:

(a) a Committed Loan Notice;

(b) executed counterparts of this Agreement, the ABL Intercreditor Agreement (acknowledged by each Loan Party party thereto), the Guaranty (in the case of Holdings and each other Guarantor) and each other Loan Document (other than the Collateral Documents) required to be delivered on the Closing Date;

(c) executed counterparts of the 2019 ABL Amendment;

(d) each Collateral Document set forth on Schedule 4.01(1)(d) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with:

(i) subject to the Collateral and Guarantee Requirement, certificates, if any, representing the Pledged Collateral referred to therein, and to the extent certificated, accompanied by undated stock or note powers executed in blank; and

(ii) evidence that all UCC-1 financing statements (or equivalent forms) in all jurisdictions in which the Required Lenders reasonably determine registration is necessary to perfect or render opposable to third parties the Liens intended to be created by the Loan Documents and to satisfy the Collateral and Guarantee Requirement shall have been made, or arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(e) a recent certificate of good standing, certificate of status, certificate of compliance or analogous certificate for each Loan Party, customary certificates with regard to the Organizational Documents, and resolutions or other actions, incumbency certificates or other certificates of Responsible Officers of each Loan Party evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(f) a customary legal opinion from each of (i) Kirkland & Ellis LLP, special counsel to the Loan Parties and (ii) Keating Muething & Klekamp PLL, special Ohio counsel to the Loan Parties; and

(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

provided, *however*, that each of the requirements set forth in clause (1)(d) above, including the delivery of any document(s) or instrument(s) necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on Collateral may be perfected by (x) the filing of UCC financing statements, (y) the delivery of the stock certificate of the Borrower and its owned Domestic Subsidiaries as set forth in the Collateral and Guarantee Requirement or (z) the filing of the applicable filings for Intellectual Property that constitutes Collateral with the United States Patent and Trademark Office or the United States Copyright Office) will not constitute conditions precedent to the Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver, or cause to be delivered, such documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within 30 days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion).

(2) The Structuring Advisor shall have received the Pro Forma Financial Statements.

(3) The Administrative Agent shall have received at least three (3) Business Days before the Closing Date a properly completed and duly executed copy of IRS Form W-9 from the Borrower in addition to all documentation and other information in each Loan Party reasonably determined by the Administrative Agent or Lenders to be required by applicable U.S. regulatory authorities required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested by the Administrative Agent or Lenders in writing by it at least ten (10) Business Days prior to the Closing Date.

(4) The Closing Date Refinancing shall have occurred or substantially simultaneous with the borrowings of the Closing Date Term Loans on the Closing Date will occur.

(5) The Administrative Agent shall have received a certification by a Responsible Officer of the Borrower that, to the knowledge of the Borrower, the representations and warranties contained in Article V hereof are true and correct in all material respects on and as of the Closing Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date.

(6) The Administrative Agent shall have received a certification by a Responsible Officer of the Borrower that prior to or substantially concurrently with the funding of the Closing Date Term Loans, (i) the Closing Date Refinancing shall have been consummated.

(7) Adjusted EBITDA of the Borrower and its Subsidiaries calculated on a *pro forma* basis for the twelve-month period ended May 4, 2019 shall be at least $103,000,000.

(8) HPS shall have received the VCOC Rights Letter duly executed by the Borrower.

(9) The Administrative Agent shall have received a counterpart to the Administrative Agent Fee Letter signed by the Borrower.

(10) All fees required to be paid on the Closing Date (including fees, charges and disbursements of counsel) and reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to (i) the Commitment Letter, to the extent invoiced at least 2 Business Days prior to the Closing Date and (ii) the Administrative Agent Fee Letter shall have been paid in full in cash substantially concurrently with the borrowing of the Closing Date Term Loans (which amounts may, at the option of the Borrower, be offset against the proceeds of the Closing Date Term Loans).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto. The Required Lenders shall notify the Administrative Agent when all conditions precedent in this Article IV have been satisfied.

ARTICLE V

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders, after giving effect to the Closing Date Refinancing, on the Closing Date and, to the extent required by ~~a Refinancing Amendment~~ **an** Exchange Amendment or other amendment hereto as set forth therein:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Material Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws, orders, writs, injunctions and orders, and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (1) (other than with respect to Holdings or the Borrower), (2)(a), (3), (4) and (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents or any shareholders' agreement, unanimous shareholders' agreement or sole shareholder declaration by which such Loan Party is bound;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries of Holdings (including the Borrower) (other than as permitted by Section 7.01) under (i) any Contractual Obligation in excess of the Threshold Amount to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(1) The unaudited *pro forma* consolidated balance sheet and related unaudited *pro forma* consolidated statement of income of the Borrower as of and for the 12-month period ending on February 2, 2019, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of the statement of income) (collectively, the "**Pro Forma Financial Statements**"), copies of which have heretofore been

furnished to the Administrative Agent and the Required Lenders, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Borrower and its consolidated Subsidiaries as of February 2, 2019 and their estimated results of operations for the period covered thereby.

(2) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation. Except as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, (1) by or against Holdings, the Borrower or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect or (2) in respect of the Torrid Transactions (as defined in the Second Supplemental Indenture, dated as of January 9, 2018, among, *inter alios*, Hot Topic and The Bank of New York Mellon Trust Company, N.A.).

Section 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower its Subsidiaries pending or, to the knowledge of the Borrower, overtly threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

Section 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Subsidiaries has become subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; and (d) none of the Loan Parties or any of their respective Subsidiaries or, to the knowledge of the Borrower, any of their predecessors or any third party has treated, stored, transported or Released Hazardous Materials in violation of applicable Environmental Laws at or from any real estate or facility currently or formerly owned, leased or operated by any of the Loan Parties or any of their respective Subsidiaries.

Section 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), which are due and payable, except those Taxes which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.

There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Subsidiaries except (i) those being actively contested by a Loan Party or such Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) ~~(a)~~**(a)** No ERISA Event has occurred or is reasonably expected to occur;

(b) no Pension Plan has failed to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan;

(c) none of the Loan Parties or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan;

(d) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(e) neither any Loan Party nor any ERISA Affiliate has been notified in writing by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been determined to be in endangered or critical status and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status,

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any financial obligation in connection with the termination of or withdrawal from any Foreign Plan.

Section 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and the ABL Loan Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of each Subsidiary,

(b) the ownership interests of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership, and

(c) the Equity Interests of each Subsidiary described in clause (b) that are required to be pledged on the Closing Date after giving effect to the Transactions pursuant to the Collateral and Guarantee Requirement.

Section 5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is an "investment company" under the Investment Company Act of 1940.

Section 5.14 Disclosure. None of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, when furnished, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

Section 5.15 Intellectual Property; Licenses, etc. The Borrower and its Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how database rights and other Intellectual Property rights (collectively, "**IP Rights**") that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Anti-Terrorism Laws. No Loan Party is in material violation of any applicable Anti-Money Laundering Laws or any requirement of law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224, effective September 24, 2001 (the "**Executive Order**"), and USA PATRIOT Act. The use of proceeds of the Loans will not violate the Trading With the Enemy Act (50 U.S.C. §§ 1-44, as amended) or any applicable foreign asset control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V).

Section 5.18 Collateral Documents.

Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable Lien with the priority set forth in the Applicable Intercreditor Agreement (subject only to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the priority, perfection or the enforceability of, any pledge of or security interest in any Equity Interests of any Foreign Subsidiary or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law (other than the laws of Canada), (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) any Excluded Assets.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans issued hereunder only in compliance with (and not in contravention of) each Loan Document.

Section 5.20 Sanctions. None of Holdings, the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of Holdings, the Borrower or any Subsidiary has violated Sanctions or is a Sanctioned Person. The Borrower shall not use the proceeds of the Loans, directly or, to the Borrower's knowledge, indirectly, for the purpose of financing activities of or with any Sanctioned Person, or in any country or territory that, at the time of such financing is, or whose government is, the subject or target of any applicable Sanctions, or in any other manner that would result in a violation of applicable Sanctions by any Person that is a party to this Agreement, except to the extent licensed by OFAC or otherwise authorized under U.S. or other applicable law.

Section 5.21 Anti-Corruption Laws. None of Holdings, the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of Holdings, the Borrower or any Subsidiary, has made, offered, promised, or authorized, and no part of the proceeds of the Loans will be used directly or, to the Borrower's knowledge, indirectly, for any unlawful payments to any governmental official or employee, political party, official of a political party, candidate for political office, or any other Person acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation of any applicable Anti-Corruption Laws (any such unlawful payment, offer, promise, or authorization an "**Anti-Corruption Prohibited Activity**").

Section 5.22 Release of Guarantee. On the Closing Date after giving effect to the Transactions and the use of proceeds of the Closing Date Term Loans on the Closing Date, the Hot Topic Guarantee shall have been terminated, released and otherwise shall be of no further effect (other than with respect to contingent obligations for which no claim has been made).

Section 5.23 No Default. On the Closing Date, after giving effect to the Transactions, no Default has occurred and is continuing or would result from the consummation of the Transactions.

ARTICLE VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, Holdings shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of its Subsidiaries (including the Borrower) to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(1) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending February 1, 2020, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year (including a summary of fourth fiscal quarter balance sheet and statements of income or operations, stockholders' equity and cash flows which, for the avoidance of doubt, shall not be audited), together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers, LLC or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount or (ii) any actual or prospective breach of the Financial Covenants or any other financial maintenance covenant);

(2) as soon as available, but in any event within forty-five (45) days (or, with respect to the fiscal quarter ending May 4, 2019, within sixty (60) days) after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower commencing with the fiscal quarter ending May 4, 2019, a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) condensed consolidated statement of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by an Officer's Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;

(3) as soon as available, but in any event within thirty (30) days after the end of each of the first two (2) fiscal months of each fiscal quarter of the Borrower, commencing with the fiscal month ending June 1, 2019, management's presentation of the information set forth on Schedule 6.01(3) hereto and a summary income statement and balance sheet of the Borrower and its subsidiaries prepared on a consolidated basis;

(4) prior to the consummation of a Qualifying IPO of the Borrower, within ninety (90) days after the end of each fiscal year of the Borrower, a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected operations or income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood by the Secured Parties that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and the Investors and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); and

(5) quarterly, upon request of the Administrative Agent (for the benefit of all the Lenders and not any one Lender individually), at a time mutually agreed with the Borrower that is promptly after the delivery of the information required pursuant to Sections 6.01(1) or (2) above, as applicable, commencing with the delivery of information with respect to the first fiscal quarter ending after the Closing Date, to participate in a conference call for Lenders to discuss the financial position and results of operation of the Borrower and its Subsidiaries for the most recently ended fiscal quarter for which financial statements have been delivered.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of PricewaterhouseCoopers, LLC or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (x) shall be prepared in accordance with generally accepted auditing standards and (y) shall not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount or (ii) any actual or prospective breach of any financial maintenance covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to any transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Section 6.01.

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP, or the respective interpretation thereof, and that such restatements will not result in a Default or an Event of Default under the Loan Documents.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender:

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the fiscal quarter ending August 3, 2019), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any securities exchange or commission, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the ABL Facility, so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), a report setting forth the information required by Sections 1(a), (e) and (f), Section 2(a) and Section 11 of the Perfection Certificate (or confirming that there has been no change in such information since the latter of the Closing Date or the last such report); and

(5) promptly, such additional information regarding the business and financial affairs of any Loan Party or any Material Subsidiary, or compliance with the terms of the Loan Documents, as the Required Lenders may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered to the Administrative Agent and Lenders on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such

documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent in writing of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower, its Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent will treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent in writing of:

(1) the occurrence of any Default or Event of Default; and

(2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or its Subsidiary or (c) the occurrence of any ERISA Event or any other event or occurrence, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clauses (1) or (2) of this Section 6.05 to the extent (other than with respect to the preservation of the existence of the Borrower set forth in clause (1)) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or to the extent such non-compliance is in connection with a merger, amalgamation, consolidation, liquidation, dissolution or disposition permitted by Article VII.

Section 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in reasonably good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to the Borrower's and its Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Borrower or any Subsidiary be required to obtain or maintain insurance that is more restrictive than what is consistent with past practice. Each such policy of insurance will as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder; *provided* that to the extent that the requirements of this Section 6.07 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days of the Closing Date (or such later date as the Administrative Agent may agree).

(2) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower will, or will cause each Loan Party to (a) maintain, or cause to be maintained, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (b) deliver to the Collateral Agent (A) evidence as to whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, (B) the Borrower's written acknowledgment of receipt of written notification from the Administrative Agent as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (C) copies of an application for a flood insurance policy *plus* proof of premium payment, a declaration page confirming that such flood insurance has been issued, or such other evidence of such flood insurance reasonably satisfactory to the Administrative Agent and naming the Collateral Agent as mortgagee and loss payee (the requirements of clauses (a) and (b) being the "**Flood Insurance Requirements**").

Section 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property (including ERISA, the USA PATRIOT Act, applicable Sanctions and the FCPA), except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower*; provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02. The Lenders shall indemnify the Administrative Agent for all costs, fees and expenses incurred by the Administrative Agent under this Section 6.10 whether or not the Borrower is required to reimburse the Administrative Agent for such costs, fees and expenses.

Section 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Subsidiary or (iii) an Excluded Subsidiary that is a Material Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within sixty (60) days (or such greater number of days specified below) after such formation or acquisition or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion cause such Material Subsidiary required to become a Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within sixty (60) days after such formation or acquisition, cause each such Material Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent supplements to the Security Agreement, a counterpart signature page to the Intercompany Subordination Agreement, Intellectual Property Security Agreements and other security agreements and documents necessary to satisfy the Collateral and Guarantee Requirement, as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation or acquisition, cause each such Material Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and a joinder to the Intercompany Subordination Agreement substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Subsidiary;

(C) within sixty (60) days) after such formation or acquisition, take and cause (i) the applicable Material Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement, (ii)(x) to the extent applicable, each direct or indirect parent of such applicable Material Subsidiary and (y) such applicable Material Subsidiary to the extent it is the direct or indirect parent of any CFC, Foreign Subsidiary Holding Company, Canadian Subsidiary or other Foreign Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code and/or PPSA financing statements (or equivalent forms) and delivery of stock and membership interest certificates to the extent certificated) as may be necessary in the

reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request (with such opinion being consistent with the Opinion of Counsel delivered to the Administrative Agent on the Closing Date);

provided that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(2) Material Real Property.

(a) Notice.

(i) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the formation or acquisition of a Material Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Material Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Material Subsidiary.

(ii) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party (other than Holdings), after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within one hundred and twenty (120) days of the formation or acquisition of such Material Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each applicable jurisdiction (the "**Mortgage Policies**") in form and substance, with endorsements, including zoning endorsements, available in the applicable jurisdiction and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured (as applicable) by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents) and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction and with respect to any property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality or a zoning report from Planning and Zoning Resources Corporation (or other similar company reasonably acceptable to the Collateral Agent), in each case to be reasonably satisfactory to the Collateral Agent;

(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings, the authorization, execution and delivery of the Mortgages and such other matters as the Collateral Agent may reasonably request, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) American Land Title/American Congress on Surveying and Mapping surveys for each Material Real Property or existing surveys together with customary no change affidavits, in each case certified to the Collateral Agent if deemed necessary by Collateral Agent in its reasonable discretion, sufficient for the title insurance company issuing a Mortgage Policy to remove the standard survey exception and issue standard survey related endorsements;

(v) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property (where applicable) containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws, and if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be a special flood hazard area, the Borrower's duly executed acknowledgement of receipt of written notification from the Collateral Agent about special flood hazard area status and flood disaster assistance and evidence of compliance with the Flood Insurance Requirements; and

(vi) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have been prepared in connection with such formation or acquisition of any Material Subsidiary or acquisition of any Material Real Property.

(3) Except to the extent covered by another Collateral Document, the Borrower will, or will cause the applicable Loan Party to, maintain at all times all cash and Cash Equivalents (but excluding Excluded Funds or any Excluded Accounts) at Deposit Accounts or Securities Accounts with any financial institution that has entered into a Control Agreement; *provided* that (i) Control Agreements required to be delivered under this Section 6.11 with respect to deposit accounts and securities accounts existing as of the Closing Date shall be subject to the Collateral and Guarantee Requirement and (ii) upon the opening of any new Deposit Account or Securities Account, the Borrower shall have 60 days to put an applicable Control Agreement in place.

Section 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

Section 6.13 Further Assurances and Post-Closing Covenant. Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

Section 6.14 Use of Proceeds. The proceeds of the Closing Date Term Loans, together with borrowings under the ABL Facility, will be used on the Closing Date (i) to consummate the Closing Date Refinancing, (ii) to pay the Transaction Expenses and (iii) to the extent any such proceeds remain after the foregoing uses, for general corporate purposes not prohibited by the terms of this Agreement.

Section 6.15 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except to the extent such Lease is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, (c) notify the Administrative Agent of any default by any party with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing, except, in each case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.16 Accounting Changes. The Borrower shall, and shall cause its Subsidiaries to, maintain their fiscal year as in effect on the Closing Date; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.17 Nature of Business. The Borrower shall and shall cause its Subsidiaries to, engage in material line of business substantially the same as those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complimentary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and its Subsidiaries on the Closing Date.

Section 6.18 [Reserved].

Section 6.19 Anti-Terrorism Law; Anti-Money Laundering; Anti-Corruption Laws.

(1) Borrower shall not:

(A) Directly or indirectly (i) knowingly deal in, or otherwise knowingly engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law in violation of any applicable Anti-Terrorism Law or applicable Sanctions, (ii) knowingly transact business with or for the benefit of any Sanctioned Person in violation of applicable Sanctions, or (iii) otherwise knowingly engage in or conspire to engage in any transaction that violates or attempts to violate, any of the material prohibitions set forth in any applicable Anti-Terrorism Law or applicable Sanctions;

(B) Directly, or knowingly indirectly, undertake any Anti-Corruption Prohibited Activity;

(C) Violate any applicable Anti-Money Laundering Laws;

(D) (i) Repay the Loans, in whole or in part, using funds or properties of Holdings, the Borrower or any Subsidiaries that are, to the knowledge of the Borrower, derived from transactions or dealings with any Sanctioned Person or that are, to the knowledge of the Borrower, the property of any Sanctioned Person or the product of a violation of Sanctions or any Anti-Corruption Prohibited Activity or (ii) to the knowledge of the Borrower, permit any Sanctioned Person to have any direct or indirect interest, in Holdings, the Borrower or any of their respective Subsidiaries, with the result that the investment in Holdings, the Borrower or any of their respective Subsidiaries (whether directly or indirectly) or the Loans made by the Lenders would be in violation of any applicable Sanctions; and

(2) Each Loan Party will maintain in effect and enforce policies and procedures, as applicable, that are reasonably designed to ensure compliance by the Loan Parties and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws, Anti-Money Laundering Laws, and applicable Sanctions.

Section 6.20 Certain Affiliate Agreements. Each Loan Party that is party to any of the agreements set forth on Schedule 7.06 shall (a) perform and observe all the terms and provisions of each such agreement, as the same may be amended, waived, modified or replaced from time to time in a manner not materially adverse to the Loan Parties (as determined by the Borrower in good faith), to be performed or observed by it and (b) maintain and defend each such agreement in full force and effect in accordance with its terms, as the same may be amended, waived, modified or replaced from time to time in a manner not materially adverse to the Loan Parties (as determined by the Borrower in good faith); except to the extent, in each case (i) such agreement is no longer used or useful in the conduct of the business of such Loan Party in the ordinary course of business, consistent with past practices, (ii) Hot Topic or its Subsidiaries no longer constitutes an Affiliate of the Borrower or (iii) such agreement is replaced with an agreement whereby similar services are provided by a Person that does not constitute an Affiliate of the Loan Parties; it being understood and agreed that, for purposes of clauses (a) and (b) above, any such amendment, waiver, modification or replacement which has the effect of increasing the costs or expenses to be borne by the Loan Parties by more than 10% in the aggregate per annum over the amount of such costs and expenses as in effect on the Closing Date (or, with respect to the Reverse TSA,

as of such date of entry) shall be deemed to be materially adverse to the Loan Parties. Notwithstanding the terms of any agreement set forth on Schedule 7.06, the Loan Parties hereby agree to ensure that (x) the "Closing Date" (as defined in the IT Purchase Agreement) shall have occurred no later than August 1, 2020 and (y) the Loan Parties shall have completed the transition of each of the functions described as "TNDC IFC", "TNDC Retail Services" and "CADC IFC" (as each such term is used under the Shared Services Agreement as in effect on the Closing Date) to the Borrower's warehouse in West Jefferson, Ohio or a location owned by a Person that does not constitute an Affiliate of the Borrower by no later than December 31, 2020; *provided* that in the case of this clause (y), if as of December 31, 2020 any of Hot Topic or its Subsidiaries constitute an Affiliate of the Borrower, then no transition shall be required so long as from and after December 31, 2020 the economic terms associated with the foregoing functions, taken as a whole, are not less favorable, and the non-economic terms, taken as a whole, are not materially less favorable, in each case, to the Loan Parties than the terms set forth in the Shared Services Agreement as in effect on the Closing Date.

ARTICLE VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

Section 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) on any asset or property of the Borrower or any Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or Preferred Stock; and

(b) the foregoing clause (a) shall not apply to the following:

(1) Indebtedness of the Borrower and of its Subsidiaries under the Loan Documents (including ~~Refinancing Loans,~~ Extended ~~Loans and Replacement Loans~~);

(2) [reserved];

(3) (a) the incurrence of Indebtedness by the Borrower and any Subsidiary in existence on the Closing Date listed on Schedule 7.02(3) (excluding Indebtedness described in the preceding clause (1) and clause (25) below);

(4) Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) incurred or issued by the Borrower or any Subsidiary and Preferred Stock issued by any Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness or Preferred Stock incurred or issued and outstanding under this clause (4), without regard to any Indebtedness listed on Schedule 7.02(3) and any Refinancing Indebtedness of the Indebtedness referred to in this clause (4), at such time not to exceed $15,000,000;

(5) Indebtedness incurred by the Borrower or any Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, completion guarantees warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion, bid, appeal or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(6) the incurrence of Indebtedness arising from agreements of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition that, in the case of earnouts or similar obligations, when aggregated with the principal amount of all other such Indebtedness incurred pursuant to this clause (6) does not exceed $2,000,000 at any one time outstanding;

(7) the incurrence of Indebtedness of the Borrower to a Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Subsidiary to the Borrower or another Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Subsidiary) to the extent permitted by Section 7.05; *provided* that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Subsidiary ceasing to be a Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Subsidiary issued to the Borrower or a Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) in respect of Hedge Agreements designed to hedge against fluctuations in interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business;

(11) [reserved];

(12) the incurrence of:

(a) unsecured Subordinated Indebtedness of the Borrower and unsecured Subordinated Indebtedness or Preferred Stock of the Borrower or any Subsidiary in an aggregate principal amount or liquidation preference up to 100.0% of the net cash proceeds received by the Borrower and its Subsidiaries since the Closing Date from the issue or sale of Equity Interests (other than Disqualified Stock) of the Borrower and the Subsidiary Guarantors or contributions to the capital of the Borrower and the Subsidiary Guarantors, including through consolidation, amalgamation or merger in each case excluding any ABL Cure Amount, any Cure Amount, or Indebtedness or Equity Interests issued to Holdings, the Borrower or any Subsidiary and solely to the extent Not Otherwise Applied; *provided*, that the interest payable in connection with any unsecured Subordinated Indebtedness incurred by the Borrower or any Subsidiary pursuant to this clause (12)(a) shall solely be "payable-in-kind"; and

(b) Indebtedness of the Borrower and Indebtedness or Preferred Stock of the Borrower or any Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed $15,000,000 at any one time outstanding *plus*, without duplication, in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, an amount equal to the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness;

(13) the incurrence by the Borrower or any Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness permitted under clauses (3) and (12)(a) above, this clause (13) and clauses (14), (30), or any successive Refinancing Indebtedness with respect to any of the foregoing;

(14) (a) Indebtedness of the Borrower or Indebtedness or Preferred Stock of a Subsidiary (in each case, only to the extent not incurred in contemplation thereof), assumed by the Borrower or any Subsidiary in connection with a Permitted Acquisition or any other similar Investment permitted hereunder; (b) Acquired Indebtedness and Indebtedness, Disqualified Stock or Preferred Stock of Persons

that are acquired by the Borrower or any Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Subsidiary in accordance with the terms of this agreement, that, when aggregated with the principal amount of all other Indebtedness and Preferred Stock then outstanding and incurred or assumed, as applicable, pursuant to this clause (14), together with any Refinancing Indebtedness in respect thereof, does not exceed $10,000,000 at any one time outstanding it being understood that with respect to assumed Indebtedness incurred under this clause (14), such Indebtedness is only the obligation of the Person and/or Person's Subsidiaries that are acquired or that acquire the relevant assets and such Indebtedness was not created in contemplation of such acquisition;

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) the incurrence of Indebtedness of the Borrower or any Subsidiary supported by letters of credit or bank guarantees permitted hereunder, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Subsidiary of Indebtedness or other obligations of the Borrower or any Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Subsidiary is otherwise permitted by this Section 7.02, or (b) any co-issuance by the Borrower or any Subsidiary of any Indebtedness or other obligations of the Borrower or any Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Subsidiary was permitted under this Section 7.02;

(18) the incurrence of Indebtedness issued by the Borrower or any Subsidiary to future, present or former employees, directors, officers, members of management and consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by the Borrower or any Subsidiary in connection with discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;

(22) the incurrence of Indebtedness of the Borrower or any Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) [reserved];

(24) the incurrence of Indebtedness by the Borrower or any Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) Indebtedness incurred pursuant to the ABL Facility so long as the aggregate outstanding principal amount of Loans (as defined in the ABL Credit Agreement) at any one time outstanding under the ABL Facility does not exceed the sum of (x) (i) prior to the effectiveness of any Incremental ABL Loans, $60,000,000 (and Aggregate Commitments (as defined in the ABL Credit Agreement) at such time no greater than $70,000,000) and (ii) on or following the effectiveness of any Incremental ABL Loans, $85,000,000 (and Aggregate Commitments (as defined in the ABL Credit Agreement) at such time no greater than $100,000,000), *plus* (y) other ABL Obligations not constituting principal and, in each case, together with any Refinancing Indebtedness in respect thereof; *provided*, that (I) an ABL Facility permitted pursuant to this clause (25) must be of the type that constitutes a bank-provided revolving credit facility (but which shall permit entering into any "first-out, last-out" or similar financings provided by such banks) and (II) this clause (25) shall not permit the incurrence of any Incremental ABL Loans under the ABL Facility unless as of the date on which the Incremental ABL Loans are effective (A) Adjusted EBITDA of the Borrower and its Subsidiaries for the most recently ended Test Period is equal to or greater than $130,000,000 calculated on a pro forma basis, (B) (i) the guarantors in respect of the Incremental ABL Loans, shall be the same as the guarantors under the existing ABL Facility, (ii) any assets or property pledged to secure the Incremental ABL Loans shall also be pledged to secure the existing ABL Facility and (iii) the terms of the applicable Incremental ABL Loans are the same as the terms of the existing ABL Facility (other than with respect to pricing, fees and, in the case of any "first-in last-out" or similar financing, advance rates and related definitions) and (C) no Event of Default shall have occurred and be continuing;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) the incurrence of Indebtedness by Subsidiaries that are not Guarantors in an amount not to exceed $2,000,000 at any one time outstanding in the form of ordinary course working capital lines of credit or local lines of credit that is non-recourse to any Loan Party and is not secured by assets constituting Collateral, together with any Refinancing Indebtedness in respect thereof;

(30) ~~Credit Agreement Refinancing Indebtedness~~**[reserved]**;

(31) [reserved];

(32) [reserved]; and

(33) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (32) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness or Preferred Stock (or any portion thereof) at the time of incurrence meets the criteria of more than one of the categories of Permitted Indebtedness or Preferred Stock described in clauses (1) through (33) above, the Borrower, in its sole discretion, may divide and classify, such item of Indebtedness or Preferred Stock (or any portion thereof) in more than one of the types of Indebtedness or Preferred Stock described in Section 7.02(b) and will only be required to include the amount and type of such Indebtedness or Preferred Stock (or a portion thereof) in such of the above clauses as determined by the Borrower at such time; *provided* that all Indebtedness incurred hereunder on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (25), respectively;

(2) [reserved];

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness or Preferred Stock (or any portion thereof) is incurred or issued pursuant to a fixed dollar Basket under Section 7.02(b) on the same date that an item of Indebtedness or Preferred Stock (or any portion thereof) is incurred or issued under an applicable incurrence test available under Section 7.02(b), then the applicable incurrence test under Section 7.02(b) will be calculated with respect to such incurrence under such incurrence test without regard to any incurrence under a fixed dollar Basket then available under Section 7.02(b); *provided* that unless the Borrower elects otherwise, the incurrence of Indebtedness or Preferred Stock will be deemed incurred or issued first under the then available incurrence test under Section 7.02(b) to the extent permitted with the balance incurred under a then available fixed dollar Basket under Section 7.02(b); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred to refinance Indebtedness or Preferred Stock incurred pursuant to clauses (3), (4), (12), (13), (14) and (25) of Section 7.02(b) will be permitted to include additional Indebtedness or Preferred Stock incurred to pay accrued but unpaid interest and dividends and premiums, defeasance costs and fees and expenses incurred in connection with such refinancing.

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Preferred Stock, the Dollar equivalent principal amount of Indebtedness or Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness or Preferred Stock was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness or Preferred Stock is issued to Refinance other Indebtedness or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated (or the applicable growth component with respect to such Basket, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness or Preferred Stock does not exceed (i) the principal amount of such Indebtedness or Preferred Stock (as applicable) being refinanced *plus* (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including OID, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness or Preferred Stock incurred to refinance other Indebtedness or Preferred Stock, if incurred in a different currency from the Indebtedness or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division" under the Delaware Limited Liability Company Act, except that:

(1) Subject to Section 3.03(a) of the Security Agreement, Holdings or any Subsidiary may merge, amalgamate or consolidate with the Borrower (including a merger, amalgamation or consolidation, the purpose of which is to reorganize or continue the Borrower into a new jurisdiction); *provided* that:

(a) the Borrower shall be the continuing or surviving Person,

(b) such merger, amalgamation or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof, the District of Columbia or Canada or any province or territory thereof, and

(c) in the case of a merger, amalgamation or consolidation of Holdings with and into the Borrower,

(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

(ii) Holdings shall have no direct Subsidiaries at the time of such merger, amalgamation or consolidation other than the Borrower,

(iii) no Default or Event of Default exists at such time or after giving effect to such transaction, and

(iv) after giving effect to such transaction, the direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Collateral Agent and the Borrower, (B) pledge 100% of the Equity Interests of the Borrower to the Collateral Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Collateral Agent and the Borrower and (C) be in compliance with Section 7.09;

(2) ~~(a)~~**(a)** (i) any Subsidiary that is not a Loan Party may amalgamate, merge or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary that is a Loan Party may merge or consolidate with a Subsidiary that is not a Loan Party so long as such transaction would otherwise constitute a Permitted Investment;

(b) any Subsidiary may amalgamate, merge or consolidate with or into any other Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person or shall otherwise constitute a Permitted Investment;

(c) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize or continue a Loan Party in another jurisdiction in the United States or Canada will be permitted, and

(d) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders;

provided that in the case of clauses (b) through (d) of this Section 7.03(2), (x) no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom and (y) the Person who receives the assets of such dissolving or liquidated Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of "Permitted Investments";

(3) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (x) the transferee must be a Loan Party or (y) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Subsidiary which is not a Loan Party;

(4) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, the Borrower may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower's assets, is the transferee of such assets) (any such Person, a "**Successor Borrower**"):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower; and

(C) deliver to the Administrative Agent (I) an Officer's Certificate stating that such merger, amalgamation or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) satisfies the requirements under this Section 7.03(4) and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions (similar in scope and substance to the opinions delivered to the Administrative Agent on the Closing Date) to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as may be agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger, amalgamation or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder, and

(C) if reasonably requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger, amalgamation or consolidation, will, by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent and the Borrower), confirm that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement;

(iii) after giving *pro forma* effect to such incurrence, the Total Net Leverage Ratio shall not exceed the lesser of (i) 2.50 to 1.00 and (ii) the applicable Financial Maintenance Covenant level as of such time; and

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to the such transaction a properly completed and duly executed copy of the IRS Form W-9 from such Successor Borrower in addition to all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; *provided further* that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(5) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, Holdings may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) Holdings will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger, amalgamation or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated, or

(iii) in connection with a disposition of all or substantially all of Holdings' assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a "**Successor Holdings**"), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, and

(C) (I) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (II) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower; and

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to the such transaction all documentation and other information in respect of the Successor Holdings required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement;

(6) any Subsidiary may amalgamate, merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; *provided* that the continuing or surviving Person will be (a) the Borrower or (b) a Loan Party, in each case, which together with each of its Subsidiaries, will have complied with the applicable requirements of Section 6.11;

(7) a merger, amalgamation, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 (other than under clause (2)(c) of the definition of "Asset Sale");

(8) subject to Section 3.03(a) of the Security Agreement, the Borrower may (a) convert into a corporation, ULC, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States or Canada and (b) change its name;

(9) the Loan Parties and their respective Subsidiaries may consummate the Transactions; and

(10) the commencement of any proceedings against any Subsidiary under Debtor Relief Laws to the extent such proceedings do not constitute an Event of Default under Section 8.01(6).

Notwithstanding anything in this Section 7.03 and subject to the Collateral and Guarantee Requirement, in the event a Loan Party changes its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation or (ii) chief place of business or chief executive office, each Loan Party shall within 60 days (or such longer time period as may be agreed by the Collateral Agent) after any such change, give the Collateral Agent written notice of such change.

Section 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of, and

(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Subsidiary, as the case may be, and to the extent the consideration received in connection with the consummation of such Assets Sales exceeds $2,000,000 and is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower's or any Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed $2,000,000 on the date of the receipt of such Designated Non-Cash Consideration (or, at the Borrower's option, at the time of contractually agreeing to such Asset Sale), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; or

(d) [reserved]; and

(3) the Net Proceeds of such Asset Sale shall be applied and/or reinvested as (and to the extent) required by Section 2.05(2)(b).

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing

In addition, none of the Borrower or any Subsidiary shall enter into any Sale-Leaseback Transaction unless (1) at the time of the consummation thereof no Event of Default has occurred and is continuing and (2) such Sale-Leaseback Transaction is conducted as an arm's-length basis and is for fair market value of the applicable property as determined by a Responsible Officer of the Borrower in good faith.

Section 7.05 Restricted Payments~~(a)~~ . ~~(a)~~ **(a)** The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Subsidiary's Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(1) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(2) dividends, payments or distributions by a Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a wholly owned Subsidiary, the Borrower or a Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any unsecured Indebtedness, Subordinated Indebtedness or any Junior Lien Debt constituting Indebtedness for borrowed money ("**Restricted Junior Debt**" and any such payment, redemption, repurchase, defeasance, acquisition or retirement for value, a "**Restricted Junior Debt Payment**"), other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Restricted Junior Debt purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement;

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as "**Restricted Payments**");

(b) The provisions of Section 7.05(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;

(2) ~~(a)~~**(a)** the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("**Treasury Capital Stock**") or (ii) Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to the Borrower or a Subsidiary) of Equity Interests of the Borrower or any Parent Company (to the extent such Equity Interests or proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) and (y) within 120 days of such sale or issuance ("**Refunding Capital Stock**"), and

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Restricted Junior Debt of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Restricted Junior Debt of the Borrower or a Subsidiary Guarantor or Disqualified Stock of the Borrower or a Subsidiary Guarantor; *provided* such new Restricted Junior Debt shall mature no earlier, and not have a shorter weighted average life, than the Indebtedness being refinanced or exchanged and (iii) such newly issued Restricted Junior Debt otherwise satisfies the requirements set forth in the definition of "Refinancing Indebtedness",

(b) Disqualified Stock of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock of the Borrower or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence if such newly issued Disqualified Stock otherwise satisfies the requirements set forth in the definition of Refinancing Indebtedness,

(c) Disqualified Stock of a Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Subsidiary that is not a Subsidiary Guarantor, made within 120 days of such sale or issuance that, in each case, is and such newly issued Disqualified Stock otherwise satisfies the requirements set forth in the definition of Refinancing Indebtedness; and

(d) any Restricted Junior Debt or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower, any of its Subsidiaries or any Parent Company in connection with the Transactions; *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $2,500,000 in any fiscal year (increasing to $5,000,000 following a Qualifying IPO by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to the next two succeeding calendar years; *provided further* that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests and Not Otherwise Applied; *plus*

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are foregone in exchange for the receipt of Equity Interests of the Borrower or any Parent Company pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(c) the cash proceeds of life insurance policies received by the Borrower or its Subsidiaries (or by any Parent Company to the extent contributed to the Borrower) after the Closing Date; *minus*

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; *provided further* that cancellation of Indebtedness owing to the Borrower or any Subsidiary from any future, present or former employees, directors, officers, members of management, or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(5) [reserved];

(6) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Subsidiary after the Closing Date in accordance with Section 7.02;

(7) ~~(a)~~**(a)** payments made or expected to be made by the Borrower or any Subsidiary in respect of withholding or similar taxes payable with respect to payments to any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company in connection with such Person's purchase of Equity Interests of the Borrower or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company's common equity), following the first public offering of the Borrower's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed 6.0% per annum of the net cash proceeds thereof received by or contributed to the Borrower and Not Otherwise Applied and other than any public sale constituting an Excluded Contribution; *provided* that no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments made with the Available Amount; *provided* that (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) after giving *pro forma* effect thereto and the application of the net proceeds therefrom, (A) with respect to Restricted Payments (other than Restricted Investments), the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment is no greater than 1.00 to 1.00 and (B) with respect to Restricted Investments, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Investment is no greater than 1.50 to 1.00;

(11) distributions or payments of Securitization Fees;

(12) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or owed to any Affiliate(s);

(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Restricted Junior Debt from Excluded Proceeds (except to the extent included in the calculation of Available Amount);

(14) the declaration and payment of dividends or distributions by the Borrower or any Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes, and other fees, taxes and expenses, in each case, require to maintain their corporate or other legal existence;

(b) for any taxable period for which the Borrower or any of its Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (including for any taxable period for which the income of the Borrower or its Subsidiaries are disregarded and are reflected on the income tax returns of such Parent Company) (a "**Tax Group**"), to pay the portion of any U.S. federal, foreign, state and local income taxes of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and its Subsidiaries (net of any payments of such taxes made by the Borrower or its Subsidiaries); *provided* that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and its Subsidiaries, as applicable, would have been required to pay as a stand-alone Tax Group; *provided* that losses or credits of a Subsidiary of the Borrower shall only be taken into account to the extent that such Subsidiary is actually a part of a Tax Group of the Parent Company;

(c) payment of expenses and indemnities (but not any fees) pursuant to the Management Services Agreement provided on behalf of, employees, directors, officers, members of management and consultants of any Parent Company attributable to the ownership of the Borrower;

(d) non-income taxes and general corporate or other operating, administrative, compliance and overhead costs and expenses (including customary, ordinary course salary or other compensation payable to the members of the board of directors of any Parent Company (to the extent such compensation relates solely to such Person's role at such Parent Company) and expenses relating to auditing and other accounting matters) of any Parent Company attributable to the ownership of the Borrower and its Subsidiaries; provided that no management, monitoring, consulting, transaction, advisory and other fees shall be payable to any Parent Company or any director, officer or member of management thereof pursuant to this clause (d);

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Borrower or its Subsidiaries under Section 7.06(b) (other than clause 2(a) thereof);

(g) [reserved];

(h) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; *provided* that:

(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment,

(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or another Loan Party (which, for the avoidance of doubt, shall not be designated as Excluded Contributions) or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or another Loan Party (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment,

(iii) such Parent Company and its Affiliates (other than the Borrower or any Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Subsidiary could have given such consideration or made such payment in compliance with this Agreement,

(iv) any property received by the Borrower may not increase amounts available for Restricted Payments with the Available Amount or increase any other basket hereunder which would otherwise increase based on the amount of cash or property contributed to the equity capital of the Borrower or its Subsidiaries; and

(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(15) [reserved];

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Subsidiary or any Parent Company;

(17) [reserved];

(18) making payments for the benefit of the Borrower or any Subsidiary to the extent such payments could have been made by the Borrower or any Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.06;

(19) payments and distributions to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement; and

(20) Restricted Payments in an aggregate amount not to exceed $12,000,000.

provided that for purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (21) of Section 7.05(b) or one or more of the clauses contained in the definition of "Permitted Investments" at the time of making such Restricted Payment, the Borrower will be entitled to divide or classify, in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among such clauses (1) through (21) of Section 7.05(b) or one or more clauses contained in the definition of "Permitted Investments," in any manner that otherwise complies with this Section 7.05.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Subsidiary permitted to be incurred under this Agreement.

Section 7.06 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly, make any payment to, or sell, lease, transfer, license, assign or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any

transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $1,000,000, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Subsidiary with a Person other than an Affiliate of the Borrower on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Subsidiary from a financial point of view and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $1,000,000, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Subsidiaries or between or among Subsidiaries or, in any case, any entity that becomes a Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement and effected for a *bona fide* business purpose;

(2) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition but, for the avoidance of doubt, not including any Permitted Investment);

(3) ~~(a)~~**(a)** so long as no Event of Default under Section 8.01(1) and Section 8.01(6) shall have occurred and be continuing or would result therefrom, the payment of expenses pursuant to the Management Services Agreement (including any unpaid expenses accrued in any prior year) or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Closing Date,

(b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and its officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors,

(c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice,

(d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company and

(e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Subsidiary;

(5) transactions in which the Borrower or any Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Subsidiary with a Person that is not an Affiliate of the Borrower on an arm's length basis;

(6) the existence of, the transactions pursuant to, or the performance by the Borrower or any Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date and set forth on Schedule 7.06 or that will be entered into after the Closing Date, or any amendment thereto or waiver, modification, termination or replacement thereof (so long as any such amendment, waiver, modification, termination or replacement (x) is not materially disadvantageous in the good faith judgment of the Board of Directors of the Borrower, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date and (y) is in compliance with clause (A) of Section 7.06(a));

(7) the existence of, or the performance by the Borrower or any Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors of the Borrower, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, (other than those transactions governed by agreements set forth on Schedule 7.06) in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) sales of Securitization Assets in connection with any Qualified Securitization Facility;

(12) [reserved];

(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower, any Parent Company and any Subsidiary and Preferred Stock (and cancellation of any thereof) of any Subsidiary to any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;

(14) (a) investments by Affiliates (including any Investor or any Parent Company) in securities of the Borrower (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities of the Borrower contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and its Subsidiaries, in each case, in accordance with the terms of such securities;

(15) payments to or from, and transactions with, any joint venture in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto), other than transactions or joint ventures pursuant to, in connection with or in replacement or continuation of the arrangements described on Schedule 7.06;

(16) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to any tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries; *provided* that in each case (i) the amount of such payments in any taxable year does not exceed the amount that the Borrower and its Subsidiaries would be permitted to pay pursuant to Section 7.05(b)(14)(a), (b) and (d) and (ii) any amounts paid pursuant to this Section 7.06(b)(16) shall reduce the amounts permitted to be paid under Section 7.05(b)(14)(a), (b) and (d);

(17) any lease entered into between the Borrower or any Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(18) IP Rights licenses in the ordinary course of business, so long as the terms thereof are not materially less favorable to the Borrower than the comparable terms in the intellectual property license agreements in effect on on the Closing Date, if any;

(19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to the equity holders agreement or the registration rights agreement entered into on or after the Closing Date;

(20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;

(22) (a) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower or any Subsidiary owns, directly or indirectly, Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Subsidiary or any Parent Company, so long as in each case such transaction is in compliance with clause (A) of Section 7.06(a);

(23) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(25) [reserved];

payments in respect of (a) the Obligations ~~(or any Credit Agreement Refinancing Indebtedness)~~ or (b) other Indebtedness of the Borrower and its Subsidiaries held by any direct or indirect parent of Holdings; *provided* that such Obligations were acquired by a direct or indirect parent of Holdings in compliance herewith.

Section 7.07 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary Guarantor or is required to become a Guarantor to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of the Borrower or any such Subsidiary Guarantor to Guaranty the Obligations or create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents; *provided* that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any Obligation (including the application of any remedy bars thereto) to any other Obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.07(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(i) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation and any definitive documentation in respect of the Indebtedness set forth on Schedule 7.02(b)(3);

(ii) any of the ABL Loan Documents;

(iii) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (a) above on the property so acquired;

(iv) applicable Law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Subsidiary (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries or the property or assets so acquired;

(vi) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(vii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;

(viii) [reserved];

(ix) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business or consistent with industry practice;

(x) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to IP Rights and other agreements;

(xi) restrictions created in connection with any Qualified Securitization Facility that, in the good faith determination of the Board of Directors of the Borrower, are necessary or advisable to effect such Qualified Securitization Facility;

(xii) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Subsidiary or the assets or property of another Subsidiary;

(xiii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Subsidiary;

(xiv) customary provisions restricting assignment of any agreement;

(xv) restrictions arising in connection with cash or other deposits permitted under Section 7.01 and any other agreement or instrument governing any Indebtedness or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to any Subsidiary than (A) the restrictions contained in the Loan Documents as of the Closing Date or the ABL Loan Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to that Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(xvi) (i) Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any Refinancing Indebtedness in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice;

(xvii) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.07;

(xviii) [reserved];

(xix) any encumbrances or restrictions of the type referred to in clause (a) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiii) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(xx) existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(xxi) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred pursuant to Section 7.02 is incurred.

Section 7.08 Modification of Terms of Restricted Junior Indebtedness. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower (on the basis of such proposed amendments, modifications or changes taken as a whole), any term or condition of any Restricted Junior Debt (other than as a result of any Refinancing Indebtedness in respect thereof) without the written consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed); *provided*, *however*, that no amendment, modification or change of any term or condition of any Restricted Junior Debt permitted by the Applicable Intercreditor Agreement or any subordination provisions set forth in the applicable Restricted Junior Debt or any other stand-alone subordination agreement in respect thereof shall be deemed to be materially adverse to the interests of the Lenders.

Section 7.09 Holdings. Holdings will not conduct, transact or otherwise engage in any business or operations or maintain any employees other than the following (and activities incidental thereto):

(1) the ownership or acquisition of the Capital Stock (other than Disqualified Stock) of the Borrower,

(2) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance,

(3) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the combined group of Holdings and the Borrower,

(4) the performance of its obligations under and in connection with, and payments with respect to, the Loan Documents, the ABL Loan Documents and any documents relating to other Indebtedness permitted to be incurred by the Borrower or its Subsidiaries under Section 7.02,

(5) any public offering of its common stock or any other issuance or registration of its Capital Stock for sale or resale not prohibited by this Article VII, including the costs, fees and expenses related thereto,

(6) repurchases of Indebtedness through open market purchases and Dutch auctions (in the case of Loans, to the extent permitted hereunder),

(7) [reserved],

(8) any transaction that Holdings is permitted to enter into or consummate under this Article VII and any transaction between or among Holdings and the Borrower or any one or more Subsidiaries permitted under this Article VII (*provided* that, to the extent Holdings wishes to make Restricted Payments to, or any Investment in, a Subsidiary it shall first make such Restricted Payment or Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Subsidiary) including:

(a) making any payment(s) or Restricted Payment(s) (i) to the extent otherwise permitted under this Section 7.09 and (ii) with any amounts received pursuant to transactions permitted under Section 7.05 (or the making of a loan to any Parent Company in lieu of any such payment(s) or Restricted Payment(s)) or holding any cash received in connection therewith pending application thereof by Holdings,

(b) making any Investment in the Borrower to the extent (i) payment therefor is made solely with the proceeds from Capital Stock of Holdings (other than Disqualified Stock), the proceeds of Restricted Payments received from the Borrower or proceeds of the issuance of, or contribution in respect of the, Capital Stock (other than Disqualified Stock) of Holdings and (ii) any property (including Capital Stock) acquired in connection therewith is contributed to the Borrower or a Subsidiary Guarantor (or, if otherwise permitted by Section 7.05 or constituting a Permitted Investment, a Subsidiary) or the Person formed or acquired in connection therewith is merged with the Borrower or a Subsidiary Guarantor;

(c) guaranteeing the obligations of the Borrower and its Subsidiaries to the extent such obligations are not prohibited hereunder and the incurrence of Liens on the Equity Interests of the Borrower;

(d) unsecured Indebtedness consisting of promissory notes issued by any Loan Party to future, present or former employees, directors, officers, managers, distributors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any Subsidiary or any Parent Company to finance the retirement, acquisition, repurchase, purchase or redemption of Capital Stock of Holdings,

(e) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes,

(f) providing indemnification to officers and directors and as otherwise permitted in this Article VII,

(g) activities incidental to the consummation of the Transactions,

(h) the making of any loan to any officers or directors contemplated by Section 7.05 or constituting a Permitted Investment, the making of any investment in the Borrower or any Subsidiary Guarantor or, to the extent otherwise allowed under Section 7.05 or constituting a Permitted Investment, a Subsidiary; *provided* that, to the extent Holdings wishes to make a loan to or any Permitted Investment in a Subsidiary it shall first make such loan or Permitted Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Subsidiary,

(i) making contributions to the capital of the Borrower (which may be further invested in its Subsidiaries),

(j) making Investments in cash and Cash Equivalents, or

(k) maintaining officers to the extent such roles are in effect on the Closing Date and maintaining members of its board of directors;

provided that any Investment of Holdings in the Equity Interests or other securities of the Borrower shall be subject to a Lien in favor of the Secured Parties.

(9) activities incidental to the businesses or activities described in clauses (1) through (8) of this Section 7.09.

Section 7.10 Financial Covenants.

(1) Commencing with the Test Period ending on November 2, 2019 and for each Test Period ending thereafter, the Borrower shall not permit the Total Net Leverage Ratio as of the last day of each Test Period set forth below to be greater than the Total Net Leverage Ratio set opposite such Test Period below (such requirement, the "**Financial Maintenance Covenant**"):

Test Period Ending	Total Net Leverage Ratio
November 2, 2019	3.60:1.00
February 1, 2020	3.35:1.00
May 2, 2020	3.35:1.00
August 1, 2020	3.35:1.00
October 31, 2020	3.10:1.00

Test Period Ending	Total Net Leverage Ratio
January 30, 2021	2.50:1.00
May 1, 2021	2.35:1.00
July 31, 2021	2.10:1.00
October 30, 2021	2.10:1.00
January 29, 2022 and each fiscal quarter ending thereafter	1.85:1.00

(2) Commencing with the fiscal year ending February 1, 2020, the aggregate amount of Capital Expenditures paid in cash by the Borrower and its Subsidiaries, on a consolidated basis, for any fiscal year shall not exceed 37.5% of Adjusted EBITDA of the Borrower and its Subsidiaries (the "**CapEx Threshold Amount**") for the fiscal year ended immediately prior to the applicable fiscal year determined by reference to (1) in the case of the fiscal year ending February 1, 2020, the 2018 Audited Financial Statements delivered to the Structuring Advisor prior to the Closing Date and (2) for each fiscal year thereafter, the audited financial statements and related Compliance Certificate delivered pursuant to Section 6.01(1) (such requirement, the "**CapEx Financial Covenant**" and, together with the Financial Maintenance Covenant, the "**Financial Covenants**"); *provided* that, notwithstanding the foregoing, the aggregate amount of Capital Expenditures paid in cash in respect of any concept that does not constitute a "Torrid Concept" shall not exceed (1) during any four fiscal quarter period, $5,000,000 in the aggregate for such four fiscal quarter period and no unutilized amounts pursuant to this clause (1) shall be applied to the Carry Forward Amount (as defined below) and (2) during the tenor of the Term Facility, $15,000,000 in the aggregate. If in any fiscal year of the Borrower, the amount of Capital Expenditures paid in cash is less than the CapEx Threshold Amount, 50% of such difference (the "**Carry Forward Amount**") shall automatically be applied to increase the CapEx Threshold Amount in the immediately succeeding fiscal year of the Borrower for purposes of determining compliance with the CapEx Financial Covenant in such immediately succeeding fiscal year (with the Carry Forward Amount being deemed utilized prior to the CapEx Threshold Amount for such fiscal year).

ARTICLE VIII

Events of Default and Remedies

Section 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an "Event of Default":

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan, fee, premium (including the Prepayment Premium) or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any other Loan Party or, in the case of Section 7.09, Holdings fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(1) or 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; or

(3) Other Defaults. (a) Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document to be performed or observed by such Loan Party and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or (b) the Borrower fails to perform or observe the covenant contained in Section 7.10(1); *provided* that in the case of this clause (b) an Event of Default shall not occur until the expiration of the Cure Deadline without the consummation of the Cure Right; or

(4) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by the Borrower or any Subsidiary Guarantor herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(5) Cross-Default and Cross-Acceleration. Any Loan Party or any Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness referred to in the foregoing clause (a), or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower, or any Subsidiary Guarantor or any Subsidiary) with respect to such Indebtedness, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02, (B) this clause (5)(b) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of the non-payment of such Indebtedness or the non-payment or non-performance of obligations related thereto is to convert such Indebtedness into Equity Interests (other than Disqualified Equity Interests) and cash in lieu of fractional shares and (C) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided*, *further*, that an ABL Event of Default (other than failure to comply with the ABL Financial Covenant (after giving effect to all applicable grace periods and the ability to exercise the ABL Cure Right in accordance with the terms thereof)) shall not constitute an Event of Default hereunder until the date that constitutes the earlier of (x) the date that occurs thirty days following the occurrence and continuance of the applicable ABL Event of Default and (y) the date on which a majority of the ABL Lenders have delivered a notice evidencing their intention to accelerate the ABL Obligations and such notice has not been rescinded; or

(6) Insolvency Proceedings, etc. Holdings, the Borrower, any Loan Party or any Significant Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, trustee, assignee, monitor, sequestrator, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, interim receiver, trustee, assignee, monitor, sequestrator, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against any Loan Party or any Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) calendar days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan or (c) with respect to a Foreign Plan a termination, withdrawal or noncompliance with applicable Law or plan terms; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery, and for any reason, other than (a) as expressly permitted by any Loan Documents (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions;

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, a valid and perfected Lien with the priority required by the Applicable Intercreditor Agreement (or other applicable Loan Document) on and security interest in any material portion of the Collateral, subject to Liens permitted under Section 7.01, except to the extent that (i) any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (ii) the loss thereof results from the failure of the Administrative Agent or the Collateral Agent (or its designee) to (a) maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents or (b) file Uniform Commercial Code amendments relating to a Loan Party's change of name or jurisdiction of formation (but solely to the extent that the Borrower has timely provided the Collateral Agent written notice of such change of name or jurisdiction of formation thereof in accordance with the Loan Documents, and the Collateral Agent notifies the Borrower that it will be responsible for filing such amendments) and continuation statements or to take any other action within its sole control with respect to the Collateral and except as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(11) Subordination Provisions. Any material provision of any agreement, document or instrument governing governing the subordination of any Subordinated Indebtedness having an aggregate outstanding principal amount (individually or in the aggregate with all other Subordinated Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount cease to be in full force and effect other than (a) as expressly permitted by any Loan Documents, (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions; or

(12) Change of Control. There occurs any Change of Control.

Section 8.02 Remedies upon Event of Default. (a) If any Event of Default occurs and is continuing (other than an Event of Default under Section 8.01(3)(b) unless the condition in the proviso contained therein has been satisfied), the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments will be terminated;

(2) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts and premiums (including the Prepayment Premium) owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(3) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"), or any other event described in Section 8.01(6), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest, premiums (including the Prepayment Premium) and other amounts as aforesaid will automatically become due and payable without further act of the Administrative Agent or any Lender.

(b) Notwithstanding the foregoing or anything in the Loan Documents to the contrary, at the direction of the Required Lenders, the Administrative Agent may, in exercising remedies, take any and all necessary and appropriate action to effectuate a credit bid of all Loans (or any lesser amount thereof) for the Borrower's assets in a bankruptcy, foreclosure or other similar proceeding, forbear from exercising remedies upon an Event of Default, or in a bankruptcy proceeding, enter into a settlement agreement on behalf of all Lenders.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to the Applicable Intercreditor Agreement then in effect, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and all other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04, 10.05 and amounts payable under Article III) payable to the Administrative Agent and Collateral Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, premium (including the Prepayment Premium), indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III and the Administrative Agent Fee Letter) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Section 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01(3), in the event that the Borrower fails to comply with the requirement of the Financial Maintenance Covenant, any of the Permitted Holders, Holdings or any other Person designated by the Borrower shall have the right at any time during the period beginning at the start of the last fiscal quarter of the applicable Test Period and ending on or prior to the tenth (10th) Business Day after the date on which financial statements with respect to the Test Period in which such covenant is being measured are required to be delivered pursuant to Section 6.01 (such date, the "**Cure Deadline**"), to make a direct or indirect equity investment in the Borrower in cash in the form of common Equity Interests (or other Qualified Equity Interests reasonably acceptable to the Administrative Agent) (the "**Cure Right**"), and upon the receipt by the Borrower of net cash proceeds pursuant to the exercise of the Cure Right (the "**Cure Amount**"), the Financial Maintenance Covenant shall be recalculated, giving effect to a pro forma increase to Adjusted EBITDA for such Test Period in an amount equal to such Cure Amount; *provided* that such pro forma adjustment to Adjusted EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under the Financial Maintenance Covenant with respect to any Test Period that includes the fiscal quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document.

(2) If, after the receipt of the Cure Amounts and the recalculations pursuant to clause (1) above, the Borrower shall then be in compliance with the requirements of the Financial Maintenance Covenant during such Test Period, the Borrower shall be deemed to have satisfied the requirements of the Financial Maintenance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; *provided* that (i) the Cure Right may be exercised on no more than five (5) occasions, (ii) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Cure Right is exercised, (iii) the Cure Right shall not be exercised in consecutive fiscal quarters, (iv) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Borrower to be in pro forma compliance with the Financial Maintenance Covenant (such amount, the "**Necessary Cure Amount**") (*provided* that if the Cure Right is exercised prior to the date financial statements are required to be delivered for such fiscal quarter then the Cure Amount shall be equal to the amount reasonably determined by the Borrower in good faith that is required for purposes of complying with the Financial Maintenance Covenant for such fiscal quarter (such amount, the "**Expected Cure Amount**"), (v) subject to clause (3) below, all Cure Amounts shall be disregarded for purposes of determining any baskets or financial ratio or test calculations (other than with

respect to the Financial Maintenance Covenant), with respect to the covenants contained in the Loan Documents and (vi) there shall be no pro forma or other reduction in Indebtedness (by netting or otherwise) with the proceeds of any Cure Amount for determining compliance with the Financial Maintenance Covenant for the fiscal quarter for which such Cure Amount is deemed applied unless such proceeds are actually applied to prepay Indebtedness, in which case, such reduction in Indebtedness may only be reflected in fiscal quarters subsequent to the Test Period with respect to which the applicable Cure Amount is exercised.

(3) Notwithstanding anything herein to the contrary, (A) to the extent that the Expected Cure Amount is (i) greater than the Necessary Cure Amount, then such difference may be used for the purposes of determining any baskets (other than any previously contributed Cure Amounts), with respect to the covenants contained in the Loan Documents or the Available Equity Amount or (ii) *less* than the Necessary Cure Amount, then not later than the applicable Cure Deadline, the Borrower must receive a direct or indirect equity investment in cash in the form of common Equity Interests (or other Qualified Equity Interests reasonably acceptable to the Administrative Agent), which cash proceeds received by Borrower shall be equal to the shortfall between such Expected Cure Amount and such Necessary Cure Amount and (B) prior to the Cure Deadline (x) the Lenders shall not be permitted to exercise any rights then available as a result of an Event of Default under Section 8.02 on the basis of a breach of the Financial Maintenance Covenant so as to enable the Borrower to consummate its Cure Right as permitted under this Section 8.04 and (y) the Lenders shall not be required to make any Loans unless and until the Borrower has received the Cure Amount required to cause the Borrower to be in compliance with the Financial Maintenance Covenant.

ARTICLE IX

Administrative Agent and Other Agents

Section 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints Cortland Capital Market Services LLC to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent and Collateral Agent to take such actions on its behalf and to exercise such rights, remedies and powers as are delegated to the Administrative Agent and Collateral Agent by the terms hereof or thereof (including any subordination and intercreditor agreements), together with such rights, actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.09, 9.11, 9.12 and 9.16) are solely for the benefit of the Administrative Agent, Collateral Agent and the Lenders; the Loan Parties shall not have rights as a third-party beneficiary of any such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement, 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 or Collateral Agent.

(2) The Administrative Agent shall also act as the "Collateral Agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the Collateral Agent of (and, in such capacity, to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, and to take all other actions, exercise all powers and perform such duties as are delegated to the Collateral Agent under the Collateral Documents, together with such powers and discretion as are reasonably incidental thereto. The Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent and/or Collateral Agent pursuant to Section 9.07 for purposes of

holding or enforcing any Lien on the Collateral (or any portion thereof), or for exercising any rights and remedies with respect thereto), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent" under the Loan Documents) and Article X as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and Collateral Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any Applicable Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by the Administrative Agent, the Collateral Agent or their respective sub-agent(s) shall bind the Lenders and the other Secured Parties.

Section 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent or Collateral Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.03 Exculpatory Provisions. None of the Agents (including the Administrative Agent, Collateral Agent and their respective Agent-Related Persons), Structuring Advisor or Arranger shall have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, none of the Agents (including the Administrative Agent, Collateral Agent and their respective Agent-Related Persons), Structuring Advisor or Arranger:

(1) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent or Structuring Advisor or Arranger is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent or Structuring Advisor or Arranger is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent or Structuring Advisor or Arranger to liability or that is contrary to any Loan Document or applicable law; and

(3) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent, Structuring Advisor or Arranger or any of their Affiliates in any capacity.

No Agent nor any of their Agent-Related Persons shall be liable for any action taken or not taken (including (i) the making of (or omitting to make) any determination, calculations, selection, request, appointment, instruction, direction, election or providing any approval or consent to enter into any amendments, modifications or supplements or otherwise in connection with any provisions of the Loan Documents, (ii) the sending (or failure to send) any notice or the revocation (or failure to revoke) any notice, (iii) the exercise (or failure to exercise) of voting rights or powers, (iv) the filing or recording of any agreement, document or instrument (or the failure to file or records any agreement, document or instrument), (v) the exercise of any rights and remedies (and all actions incidental or related thereto), (vi) releasing, subordinating, and/or terminating any Lien or (vii) exercising any powers as the attorney-in-fact for any Loan Party) by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction (*provided*, that no action taken or not taken in accordance with clause (i) of this sentence, shall be deemed to constitute gross negligence or willful misconduct), in each case, in connection with its duties expressly set forth herein. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice (conspicuously identified as a "notice of default") describing such Default or Event of Default in sufficient detail is given to the Administrative Agent or Collateral Agent, as applicable, by the Borrower or a Lender and expressly 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 and Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents); *provided* that unless and until the Administrative Agent or Collateral Agent, as applicable, shall have received such direction, the Administrative Agent and Collateral 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, in its sole discretion.

None of the Administrative Agent, the Collateral Agent or any Agent-Related Person shall be liable or responsible for, or have any duty to ascertain or inquire into, (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report, instrument, statement or other document referred to or provided for in, or delivered to the Agents or Lenders hereunder or pursuant to the Loan Documents or in connection herewith or in connection with the Loan Documents or the transactions contemplated herein or therein, (iii) the performance or observance of any of the covenants, agreements, obligations, provisions or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the value, validity, enforceability, effectiveness, execution, collectability, sufficiency or genuineness of this Agreement, any other Loan Document or any other agreement, certificate, instrument or document, or the creation, attachment, perfection and/or priority of any Lien created or purported to be created in the Collateral by the Collateral Documents and/or the filing of financing statements, continuation and/or amendment of any financing statements filed to perfect the Liens in the applicable Collateral, (v) the value or the sufficiency of any Collateral, (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or Collateral Agent, (vii) the inspection of the properties, books or records of any Loan Party or any Affiliate thereof, (viii) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations (ix) the use of the proceeds of the Loans, or

(x) to make any disclosures with respect to the foregoing or otherwise relating to any Loan Party unless expressly required herein. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding of Loans or the component amounts thereof. Additionally, neither the Administrative Agent nor the Collateral Agent shall be responsible or have any liability for, or have any duty to (i) ascertain, inquire into, monitor or enforce compliance with the provisions hereof relating to Disqualified Institutions, Defaulting Lenders, Approved Funds, Affiliates of a Lender, Eligible Assignee, Affiliates of a Disqualified Institution, Affiliates of a Borrower, SPC, or Assignee Group (or otherwise determine whether a Person qualifies as a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group) or (ii) inquire into, monitor or enforce compliance with Section 10.07(b)(v) or Section 10.07(d). Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant qualifies as a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group and shall be permitted to treat each Lender, Participant, or prospective Lender or Prospective Participant as if it is not a Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group unless and until it receives written notice of the same from Required Lenders or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information to any Disqualified Institution, Defaulting Lender, Approved Fund, Affiliate of a Lender, Eligible Assignee, Affiliate of a Disqualified Institution, Affiliate of a Borrower, SPC or Assignee Group. For the avoidance of doubt, neither the Administrative Agent nor Collateral Agent shall be obligated to calculate or confirm the calculations of the Financial Covenants set forth herein or the other Loan Documents or in any of the financial statements of the Loan Parties.

The duties of the Administrative Agent and Collateral Agent shall be mechanical and administrative in nature; neither the Administrative Agent nor the Collateral Agent shall have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or Collateral Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender hereunder authorizes and instructs the Administrative Agent and Collateral Agent to execute and perform its obligations hereunder and under each other Loan Document.

The Structuring Advisor and the Arranger shall be entitled to all indemnification and reimbursement rights in favor of the Administrative Agent as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, neither the Structuring Advisor nor the Arranger shall, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

Section 9.04 Lack of Reliance on the Administrative Agent. Each Lender expressly acknowledges that neither the Agents nor any Agent-Related Person have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Independently and without reliance upon the Administrative Agent, Collateral Agent or any Agent-Related Person, each Lender and the holder of each Term Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition, affairs, business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrower and their respective Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection

herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and their respective Subsidiaries, based on such documents and information as such Lender has deemed appropriate, and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent and Collateral Agent shall not be (i) responsible to any Lender or any other Secured Party for (A) any recitals, statements, information, representations or warranties herein or in any other Loan Document or other document, certificate, requests, instruments, statement or other writing delivered in connection herewith, with the Loan Documents or the transactions contemplated herein or referenced or provided for herein or in the other Loan Documents, (B) the execution, effectiveness, value, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of the Holdings, the Borrower or any of their respective Subsidiaries or (C) the attachment, creation and/or perfection of the Liens granted or purported to be granted in the Collateral pursuant to the Collateral Documents, the filing of financing statements or the continuation and/or amendment of any financing statements filed to perfect the Liens in the applicable Collateral, (ii) required to make (or otherwise be responsible to the Lenders and the other Secured Parties for making) any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of their respective Subsidiaries or the existence or possible existence of any Default or Event of Default, (iii) required to calculate, or be responsible for the calculation, verification or confirmation of, the Prepayment Premium, or (iv) ascertain, inquire into, monitor or enforce, compliance with the provisions of Section 2.05(1)(e). Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent and Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent, Collateral Agent or any Agent-Related Person.

Section 9.05 Certain Rights of the Administrative Agent. The Administrative Agent and Collateral Agent may request instructions from the Required Lenders (or such greater percentage of Lenders required) prior to taking any action or entering into any amendments, modifications or supplements, making any determination (including as to whether any agreement, document or instrument is in form and substance satisfactory to such Agent), making any calculation (which shall be computed by the Required Lenders), sending any notice, revoking any notice, making a selection, request, election or appointment (including failing to make a selection, request, election or appointment), exercising any voting rights or powers (including failing to exercise any voting rights or powers), exercising any rights and remedies (and all actions incidental or related thereto), releasing, subordinating and/or terminating any Lien, exercising any powers as the attorney-in-fact for any Loan Party, providing any consent, approval, instruction or direction (including failing to provide any consent, approval, instruction or direction) or making (or failing to make) any filing or recording in connection with this Agreement or any of the other Loan Documents and may refrain (and shall incur no liability from so refraining) from taking or omitting to take any act or making any such determination, calculation, selection, request, exercising such voting rights or powers or providing such notice, approval or consent or entering into any amendments, modifications or supplements until it receives such instruction (or calculation, as applicable) from the Required Lenders (or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents) and such additional indemnity from the Lenders, in each case, as it deems reasonably appropriate (and until such instructions and indemnity, as applicable, are received, the Administrative Agent and/or the Collateral Agent shall act, or refrain from acting, as it deems advisable in its sole discretion) and neither the Administrative Agent nor Collateral Agent shall incur liability to any Lender, any other Secured Party or

any Borrower or Loan Party by reason of so refraining. Without limiting the immediately preceding sentence, in no event shall the Administrative Agent be required to (A) reallocate payments in accordance with Section 2.17(1)(b) without receiving direction from the Required Lenders, (B) approve the form of financial statements of the Borrower or any Opinion of Counsel without receiving direction from the Required Lenders, or (C) enter into any extension or amendment without receiving direction from the requisite percentage of the applicable Lenders. The Administrative Agent and Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with the request of the Required Lenders (or such number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent or Collateral Agent as a result of the Administrative Agent or Collateral Agent, as the case may be, acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders (or such greater percentage of Lenders required). Notwithstanding any other provisions set forth in this Agreement or any other Loan Documents, neither the Administrative Agent nor the Collateral Agent shall be required to take any action that is in its opinion contrary to applicable Law (including, for the avoidance of doubt, any action that may be in violation of the automatic stay under the Bankruptcy Code (or similar laws)) or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of the Bankruptcy Code (or any similar laws) or the terms of any of the Loan Documents that would in its reasonable opinion subject it or any of its officers, employees or directors to personal liability. Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption and/or funding its Loans, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by the Administrative Agent and/or Collateral Agent, Required Lenders or Lenders, as applicable, on the Closing Date or as of the date of funding such Loan.

Section 9.06 Reliance by the Administrative Agent. The Administrative Agent and Collateral Agent shall be entitled to rely upon, and shall be fully protected in relying upon (and shall not be liable for so relying upon), any communication, request, instrument, note, consent, affidavit, letter, writing, resolution, notice, statement, certificate, e-mail or other electronic message, order, internet or intranet website posting, or other document (or writing), conversation or telephone message signed, sent or made (or authenticated) by (or, in the case of a conversation, with) any Person that the Administrative Agent and/or Collateral Agent believed to be the proper Person, and, with respect to all legal matters (including all duties and obligations of Administrative Agent and Collateral Agent hereunder and under the other Loan Documents) pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of legal counsel, independent accountants and other experts and professional advisors selected by the Administrative Agent or Collateral Agent, as applicable. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation, transfer thereof shall have been filed with the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender, unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts or professional advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, professional advisors or experts.

Section 9.07 Delegation of Duties. The Administrative Agent and Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more of its agents, sub agents and/or attorneys in fact appointed by the Administrative Agent and/or Collateral Agent. The Administrative Agent, the Collateral Agent and any such agent, sub agent or attorney in fact may perform any and all of its duties and exercise its rights and powers as are delegated to the Administrative Agent and/or Collateral Agent, as applicable, together with such rights and powers as are reasonably incidental thereto, by or through their respective Agent-Related Persons. The exculpatory and indemnification provisions of this Article shall apply to any such agent, sub agent or attorney in fact and to the Agent-Related Persons of the Administrative Agent and Collateral Agent and any such agent, attorney in fact or sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent and Collateral Agent. Neither the Administrative Agent nor Collateral Agent shall be responsible for the negligence or misconduct of any agents, sub agents, attorney in fact or any of their respective Agent-Related Persons selected by it with reasonable care.

Section 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent) (each, an "**Agent Indemnitee**") is not timely reimbursed and indemnified by the Borrower, the Lenders will timely reimburse and indemnify and hold harmless the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent or otherwise acting in a capacity as a sub-agent for purposes of this Agreement or any other Loan Document) in proportion to their respective Pro Rata Share for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred at any time by the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent and/or Collateral Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document (including any indemnification provided by the Administrative Agent or Collateral Agent under any Loan Document); *provided* that no Lender shall be liable to an Agent Indemnitee for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent Indemnitee's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall timely reimburse the Administrative Agent and/or Collateral Agent, as applicable, upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent and/or Collateral Agent, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein or in any Loan Document, or in connection with any transaction contemplated hereunder, or in connection with any action taken or omitted to be taken by Administrative Agent, Collateral Agent or Agent-Related Person, as applicable, under or in connection with any of the foregoing including exercising any of the Agents' powers, rights, and remedies and performing their duties hereunder and thereunder (or omitting to do the same), in each case, to the extent that the Administrative Agent and/or Collateral Agent, as applicable, is not timely reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided*, *further*, that the failure of any Lender to indemnify or reimburse the Administrative Agent or Collateral Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Loan Documents and Aggregate Commitments, the

payment of all other Obligations and the resignation of the Administrative Agent and Collateral Agent. If any indemnity furnished to the Administrative Agent or the Collateral Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

Section 9.09 The Administrative Agent and Collateral Agent in Their Individual Capacities. With respect to its obligation to make Loans under this Agreement, the Administrative Agent and Collateral Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent and Collateral Agent in their respective individual capacities. The Administrative Agent and Collateral Agent and their respective affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.10 Structuring Advisor and Arranger. Except as set forth herein, neither the Structuring Advisor nor the Arranger shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as a structuring advisor or arranger. Without limiting the foregoing, neither the Structuring Advisor nor the Arranger shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Structuring Advisor or the Arranger in deciding to enter into this Agreement or in taking or not taking action hereunder. Notwithstanding any other provisions set forth in this Agreement or the other Loan Documents, the Administrative Agent and Collateral Agent shall not be required to take any discretionary action or exercise any discretionary powers under this Agreement and/or any other Loan Document (including the issuance of any discretionary notices and the making of any discretionary calculations or determinations), except at the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent and Collateral Agent shall not be (i) required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent and/or Collateral Agent to liability or that is contrary to any Loan Document or applicable Law and (ii) liable for following any of such direction(s) by the Required Lenders or such other percentage of Lenders required hereunder.

Section 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 days' prior written notice to the Lenders (which, for purposes of this Section 9.11 shall include the Administrative Agent's capacity as Collateral Agent, unless otherwise stated). If the Administrative Agent is in material breach of its obligations hereunder as Administrative Agent, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent is a Defaulting Lender, the Borrower may remove the Defaulting Lender from such role upon 15 days' prior written notice to the Lenders.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower's approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 day period, the Administrative Agent may (but shall not be obligated to) appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 30th day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent's resignation or removal shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed; *provided* that (i) in its capacity as Collateral Agent, the retiring Administrative Agent may appoint a successor Collateral Agent and (ii) the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such Administrative Agent and Collateral Agent in respect of any actions taken or omitted to be taken by it in connection with holding such collateral security) and all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly (except for any indemnity payments or other amounts then owed to the retiring or removed Administrated and/or Collateral Agent), until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired or removed) Administrative Agent and Collateral Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent and Collateral Agent prior to the effectiveness of such removal or resignation), the terms "Administrative Agent" and "Collateral Agent" shall mean such successor agent effective upon such appointment and approval, and the retiring (or retired or removed) Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11) without any other or future act or deed on the part of such former Administrative Agent or Collateral Agent or any of the parties to this Agreement or any holders of the Loans. Any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder unless otherwise agreed.

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the resignation or removal of the Administrative Agent and Collateral Agent hereunder, the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such Administrative Agent and Collateral Agent, their respective sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while Administrative Agent was acting as Administrative Agent and Collateral Agent was acting as Collateral Agent, as applicable.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of such Administrative Agent and Collateral Agent for all of its actions and inactions while serving as the Administrative Agent and/or Collateral Agent.

Section 9.12 Collateral Matters. Each of the Lenders and the other Secured Parties hereby irrevocably authorize and instruct the Administrative Agent and the Collateral Agent (or its designee) to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, that, except as otherwise set forth herein, any action taken by the Required Lenders (or such greater percentage of Lenders required) in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders (or such greater percentage of Lenders required) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default (but shall have no obligation), to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in and subject to the provisions of this Section 9.12, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.12.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 10.24 or in any of the Collateral Documents; it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent shall have no duty unless and until expressly directed by Required Lenders and until the Collateral Agent receives such direction, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Agents shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence or collectability of the Collateral, the existence, priority or perfection of the Agents' Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, Liens therein or financing statements filed in connection therewith.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party (other than the Agents) shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or Debtor Relief Law with similar effect), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or the Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

Section 9.13 [Reserved].

Section 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor; (b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans 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 and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Administrative Agent and the Collateral Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and (c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, interim receiver, receiver and manager, assignee, trustee, liquidator, monitor, 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 Agents and their respective agents and counsel, and any other amounts due the Administrative Agent and Collateral Agent hereunder.

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.

To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent or Collateral Agent and/or their respective agents and counsel, and any other amounts due to the Administrative Agent and Collateral Agent under Sections 2.09 and 10.05 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be paid out of, any and all distributions, dividends, money, securities and other properties and/or amounts that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Section 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent or Collateral Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent and Collateral Agent are hereby authorized to appoint an additional individual or institution selected by the Administrative Agent and/or Collateral Agent (as applicable) in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Administrative Agent**" and collectively as "**Supplemental Administrative Agents**").

(2) In the event that the Administrative Agent or Collateral Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent and/or Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent, the Collateral Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent and/or Collateral Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent and Collateral Agent shall be deemed to be references to the Administrative Agent, Collateral Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent or Collateral Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent and/or Collateral Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent and/or Collateral Agent (as applicable) until the appointment of a new Supplemental Administrative Agent.

Section 9.16 Intercreditor Agreements. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the ABL Intercreditor Agreement, Term Intercreditor Agreement or any other Applicable Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the ABL Intercreditor Agreement, Term Intercreditor Agreement or any other Applicable Intercreditor Agreement, on the other hand, the terms and provisions of the ABL Intercreditor Agreement or Term Intercreditor Agreement, as the case may be shall control, and (c) each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereunder authorizes and instructs the Administrative Agent and Collateral Agent to execute and perform its obligations under the ABL Intercreditor Agreement (and any amendments, restatements, supplements or other modifications thereto approved in accordance with the terms thereof), the Term Intercreditor Agreement (and any amendments, restatements, supplements or other modifications thereto approved in accordance with the terms thereof) or any other Applicable Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

ARTICLE X

Miscellaneous

Section 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (with a copy to the Administrative Agent) (other than with respect to (i) any amendment or waiver contemplated in clauses (a)—(i) of this clause (1) below and (ii) any amendment or waiver with respect to the Fee Letters which shall only require the consent of the parties thereto), (or by the Administrative Agent) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that:

(a) only the consent of each affected Lender shall be required to extend or increase the Commitment of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) only the consent of each affected Lender shall be required to postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to such Lender, it being understood that the amendment or waiver of any mandatory prepayment shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums;

(c) only the consent of each affected Lender shall be required to reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (I) of the proviso immediately succeeding clause (i) of this Section 10.01(1)) any fees or other amounts payable hereunder or under any other Loan Document to such Lender (it being understood that any change to the definition of Total Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction in the rate of interest); *provided* that notwithstanding the foregoing only the consent of (A) the Required Lenders shall be necessary to amend the definition of "Default Rate" and (B) the Required Lenders' consent will be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), (x) no amendment, waiver or consent shall change any provision of this Section 10.01 or the definition of "Required Lenders", "Required Facility Lenders", "Supermajority Lenders" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender and (y) change the definition of "Pro Rata Share" without the written consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders, the Required Facility Lenders or the Supermajority Lenders);

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) no amendment, waiver or consent shall change the pro rata sharing of payments among Lenders pursuant to Section 2.12 or any other provision of this Agreement requiring pro rata treatment of the Loans or Lenders, in each case without the written consent of each Lender;

(h) no amendment, waiver or consent shall amend, waive or otherwise modify any term or provision (including the availability and conditions to funding and the rate of interest applicable thereto) which directly affects Lenders of one Facility and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Facility; or

(i) no amendment, waiver or consent shall amend, waive or otherwise modify the definition of "Change of Control," any term or provision of Section 2.05**, Section 2.16** or Article VII (other than any amendment, waiver or consent solely with respect to the ratio levels set forth in Section 7.10) or any component definition in any of the foregoing to the extent that an amendment thereto would otherwise modify such provision in a manner adverse to the Lenders, in each case without the written consent of the Supermajority Lenders;

provided that:

(I) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(II) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders or the Supermajority Lenders may be effected with the consent of the applicable Lenders other than Defaulting Lenders) (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded in calculating the Required Lenders, the Required Facility Lenders and the Supermajority Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Applicable Intercreditor Agreement (i) that is for the purpose of adding the holders of ~~Credit Agreement Refinancing Indebtedness or any other~~**any** Permitted Indebtedness that is secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Applicable Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the Applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Applicable Intercreditor Agreement; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time; and

(E) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any Mortgage or any other Collateral Document as may be necessary or appropriate in the opinion of the Collateral Agent and

(ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e).

(2) [Reserved].

~~(2) In addition, notwithstanding anything to the contrary in this Section 10.01, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Loans**") with replacement term loans ("**Replacement Loans**") hereunder; *provided* that~~

~~(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, *plus* accrued interest, fees, premiums (if any) and penalties thereon and fees and expenses incurred in connection with such refinancing of Replaced Loans with such Replacement Loans;~~

~~(b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replaced Loans) immediately prior to such refinancing;~~

~~(c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing;~~

~~(d) no Event of Default shall have occurred and be continuing; and~~

~~(e) all other terms (other than with respect to pricing, premiums and optional prepayment or redemption terms) applicable to such Replacement Loans shall be substantially identical to, or no more favorable taken as a whole (in each case as determined by the Borrower in its reasonable judgment) to the Lenders providing such Replacement Loans than, those applicable to such Replaced Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing (*provided* that an Officer's Certificate delivered to the Administrative Agent at least 5 Business Days prior to the incurrence of such Replacement Loans, together with a reasonably detailed description of the material terms and conditions of such Replacement Loans or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (2) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent notifies the Borrower within such five 5 Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees));~~

~~*provided further* that each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.~~

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents, intercreditor agreements, and related documents executed by Holdings, the Borrower or any Subsidiaries in connection with this Agreement and the other Loan Documents may be, amended, amended and restated, modified or otherwise waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, modification or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects, so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein) so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, or (iv) to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or protect any security interest for benefit of the Secured Parties or to otherwise enhance the rights or benefits of any Lender under any Loan Document;

(b) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any obvious error, or any error or omission of a technical or immaterial nature, or any ambiguity, omission, defect or inconsistency so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment;

(c) technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (and no other Person) to the extent necessary to (i) to integrate any ~~Refinancing Loans or~~ Extended Loans, (ii) [reserved], (iii) to increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to any Class or Classes of Lenders hereunder, (iv) increase, expand and/or extend the call protection provisions and any "most favored nation" provisions benefiting any Class or Classes of Lenders hereunder (including, for the avoidance of doubt, the provisions of Sections 2.18 hereof) and/or (v) modify any other provision hereunder or under any other Loan Document in a manner more favorable to the then-existing Lenders or Class or Classes of Lenders, in each case in connection with the issuance or incurrence of any Indebtedness permitted hereunder, where the terms of any such Indebtedness are more favorable to the lenders thereof than the corresponding terms applicable to other Loans or Commitments then existing hereunder, and it is intended that one or more then-existing Classes of Loans or Commitments under this Agreement share in the benefit of such more favorable terms in order to comply with the provisions hereof relating to the incurrence of such Indebtedness; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any ~~borrowing of Refinancing Loans, any~~ Extension ~~or any borrowing of Replacement Loans~~ and otherwise to effect the provisions of Section ~~2.15 or~~ 2.16 ~~or the immediately succeeding paragraph of this Section 10.01, respectively~~.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number or electronic mail address specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent in writing that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described and subject to the terms set forth in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent, the Collateral Agent or any of their respective Agent-Related Persons, the Structuring Advisor or the Arranger (collectively, the "**Agent Parties**") have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent Parties' transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent and the Collateral Agent may change its respective address or facsimile for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address or facsimile for notices and other communications hereunder by written notice to the Borrower, the Administrative Agent and the Collateral Agent. In addition, each Lender agrees to notify the Administrative Agent and the Collateral Agent in writing from time to time to ensure that the Administrative Agent and the Collateral Agent have on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state and Canadian securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state or Canadian securities laws.

(6) Reliance by the Administrative Agent and Collateral Agent. The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify and hold harmless the Administrative Agent, the Collateral Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic communications to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender, the Administrative Agent, the Collateral Agent, the Structuring Advisor or the Arranger to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 or the Collateral Agent in accordance with the Security Agreement (and the other applicable Loan Documents), in each case, for the benefit of all the Secured Parties; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent or the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or Collateral Agent) hereunder and under the other Loan Documents, (b) any

Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Structuring Advisor and the Arranger for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent, the Structuring Advisor and the Arranger (promptly following a written demand therefor, together with backup documentation supporting such reimbursement request) incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Holland & Knight LLP, as primary counsel to the Administrative Agent, and Milbank LLP, as primary counsel to the Lenders and, if necessary, a single local counsel in each relevant material jurisdiction and one counsel for the Administrative Agent and Collateral Agent and a single local counsel in each relevant jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent, the Structuring Advisor, the Arranger and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and Collateral Agent and one local counsel in each relevant jurisdiction, and one counsel for the Structuring Advisor, the Arranger and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agent Indemnitees and each Lender, the Structuring Advisor, the Arranger and their respective Related Persons (collectively, the "**Lender Indemnitees**"; together with the Agent Indemnitees, collectively, the "**Indemnitees**") from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of -pocket fees, disbursements and other charges of one counsel to the Agent Indemnitees taken as a whole (and if reasonably necessary, a single local counsel for all Agent Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Agent Indemnitees similarly situated taken as a whole) and one counsel to Lender Indemnitees taken as a whole (and, if reasonably necessary, a single local counsel for all Lender Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional

counsel in each relevant jurisdiction to each group of affected Lender Indemnitees similarly situated taken as a whole)) any (i) actual or threatened claim, litigation, investigation, proceeding or Environmental Liabilities relating to the Transactions or (ii) to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, in connection with the transactions contemplated hereunder, the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligation under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent, structuring advisor, or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of the Borrower or any of their Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under Section 10.04 and this Section 10.05 shall be paid within twenty (20) Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by the Borrower under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.

Section 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated,

declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto (other than the replacement of the Administrative Agent pursuant to Article IX above) shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than $1,000,000 (or an integral multiple of $1,000,000 in excess thereof), unless each of the Administrative Agent and the Borrower otherwise consents in writing; *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, (2) in respect of an assignment to any Person in its capacity as (x) trustee or custodian holding assets for the satisfaction of the obligations of any Lender (or any Affiliate of such Lender) to any counterparty to a reinsurance arrangement or (y) counterparty to a reinsurance arrangement with any Lender (or any Affiliate of such Lender) or (3) in respect of an assignment of all or a portion of the Loans, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within 15 Business Days after having received notice from the assigning Lender of a failure to respond to such request for assignment; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) of all or a portion of the Loans pursuant to Section 10.07(g);

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all documentation and other information reasonably requested by the Administrative Agent or otherwise required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act. Each assignee Lender shall be required to represent in the Assignment and Assumption that it is not a Disqualified Institution or an Affiliate of a Disqualified Institution.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to Holdings, the Borrower or any of its Subsidiaries, (B) to any Affiliate of the Borrower, (C) to a natural person or (D) to any Disqualified Institution.

This Section 10.07(b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07, from and after the date of recordation thereof by the Administrative Agent, specified in each Assignment and Assumption, (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Term Note, the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding written notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower or any Affiliate or Subsidiary of the Borrower or a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (other than clauses (d) and (i) thereof) that directly affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable as though it were a Lender)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 3.01(8) with respect to any payments made by such Lender to its Participant(s).

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to

fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(n) Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings. In addition, if any assignment or participation is made to any Disqualified Institution without the Borrower's express prior written consent (which consent shall state expressly that the Borrower acknowledges that the assignee Lender is a Disqualified Institution) in violation of clause (v) of Section 10.07(b), the Borrower may, in addition to any other rights and remedies that it may have against such Disqualified Institution, at its sole expense and effort, upon written notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such

Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(o) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

Section 10.08 [Reserved].

Section 10.09 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, members, directors, officers, employees, legal counsel, independent auditors, professionals and other experts or agents, trustees, advisors and representatives, financing sources and existing and prospective investors in any Approved Fund (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided*, *however*, that such Agent or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers) (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided*, *however*, that each Agent and each Lender agrees to seek confidential treatment with respect to any such disclosure, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a Governmental Authority; *provided* that such Agent or such Lender as applicable, agrees (x) that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of any audit or regulatory examination) unless such notification is prohibited by law, rule or regulation and (y) to seek confidential treatment with respect to any such disclosure, (d) to any other party hereto and or any other Secured Party, (e) subject to an agreement containing confidentiality provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or Participant in, or any potential or prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) or prospective Eligible Assignee or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that (i) such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Hedge Bank, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and the Agents, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action

on the part of the recipient to access such confidential information and (ii) no such disclosure shall be made to any person that is at such time a Disqualified Lender, (f) for purposes of establishing a "due diligence" defense, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate of the Borrower or (z) is independently developed by the Agents, the Lenders or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09, (i) in order to enforce its respective rights under any Loan Document in any action or proceeding or (j) on a confidential basis to any rating agency.

For purposes of this Section 10.09, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including applicable United States securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

Notwithstanding anything to the contrary provided elsewhere herein, this Section 10.09 shall not limit the activities of any affiliate of the Structuring Advisor; *provided* that Information is not disclosed to directors, officers or employees of such affiliate, other than to (x) compliance or finance personnel for compliance or finance purposes and (y) non-compliance personnel who are directors or officers of, or function in a similar oversight role at, such affiliate as long as Information is not otherwise disclosed to such affiliate or used for the benefit of such affiliate.

Section 10.10 Setoff. Subject to Section 10.19, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent (as directed by the Required Lenders), to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand

under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, and the Secured Parties, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent in writing promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.11 [Reserved].

Section 10.12 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. Except as provided in Sections 4.01 and 10.18, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.13 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption, any Loan Document or in any amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.14 Survival of Representations and Warranties. Subject to Section 1.02(9), all representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.16 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

Section 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and assigns.

Section 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and Agents and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by the Administrative Agent of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent.

Section 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Structuring Advisor, the Arranger and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Agents, the Structuring Advisor, the Arranger and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings 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 Agent, Structuring Advisor, the Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Structuring Advisor, the Arranger nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Structuring Advisor, the Arranger, 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, Holdings and their respective Affiliates, and none of the Agents, the Structuring Advisor, the Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Structuring Advisor, the Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.

(a) The Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents, (vii) to the extent such Collateral otherwise becomes Excluded Assets and (viii) in the case of (A) the Guarantee of the Obligations by Holdings and (B) the pledge by Holdings of the Equity Interests of the Borrower, in each case, upon the consummation of a Qualifying IPO of the Borrower resulting in Holdings owning, directly or indirectly, no more than 49.99% of the common equity interests of the Borrower. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender; *provided* that, upon request by the Administrative Agent or Collateral Agent (and, in each case, prior to the Administrative Agent and Collateral Agent being required to execute and deliver (or file and/or record) such instruments, documents or agreements or otherwise comply with this sentence), the Borrower shall be required to deliver a certificate to the Administrative Agent and Collateral Agent confirming that such sale or transfer of Collateral is permitted

under the Loan Documents (in the case of clause (ii) of this Section 10.24(a)) or such release of a Guarantor is permitted under the Loan Documents (in the case of clause (v) of this Section 10.24(a)), and the Administrative Agent and Collateral Agent shall be permitted to rely upon such certificate without incurring any liability therefor. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than any contingent obligations not then due) have been paid in full and all Commitments have terminated, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Permitted Lien specified in clause (7) of the definition thereof securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4) of Section 7.02(b) in any Collateral, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any such Permitted Lien to be senior to the Liens in favor of the Collateral Agent.

Section 10.25 [Reserved].

Section 10.26 Judgment Currency. If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.27 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all or a portion of such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

TORRID, LLC, as the Borrower

By: _____
Name:
Title:

TORRID, INC., as Holdings

By: _____
Name:
Title:

CORTLAND CAPITAL MARKET SERVICES LLC, as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

GOLDENTREE 2004 TRUST, as a Lender

By: _____
Name:
Title:

GOLDENTREE INSURANCE FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as a Lender

By: _____
Name:
Title:

GT NM, L.P., as a Lender

By: _____
Name:
Title:

LOUSIANA STATE EMPLOYEES' RETIREMENT SYSTEM., as a Lender

By: _____
Name:
Title:

SAN BERNADINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, as a Lender

By: _____
Name:
Title:

KKR CREDIT ADVISORS (US) LLC, as Structuring Advisor

By: _____
Name:
Title:

[_____], as a Lender

By: _____
Name:
Title:

Exhibit 10.3

Execution Version

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 23, 2017

among

TORRID LLC,
as the Lead Borrower,

For

The Borrowers Named Herein,

The Guarantors Named Herein,

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent,

The Other Lenders Party Hereto

and

BANK OF AMERICA, N.A.
and
WELLS FARGO BANK, NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunning Managers

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This AMENDED AND RESTATED CREDIT AGREEMENT ("Agreement") is entered into as of October 23, 2017, among TORRID LLC, a California limited liability company (the "Lead Borrower"), the Persons named on Schedule 1.01 hereto (together with the Lead Borrower, each a "Borrower" and collectively, the "Borrowers"), TORRID INC., a Delaware corporation ("Holdings"), and each other Guarantor (as hereinafter defined) from time to time party hereto, each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent.

The Borrowers, Holdings and the other Guarantors have entered into a Credit Agreement, dated as of May 1, 2015 (as amended and in effect, the "Existing Credit Agreement"), among such Borrowers, Holdings and the other Guarantors, the "Lenders" as defined therein, and Bank of America, N.A., as Administrative Agent and Collateral Agent.

In accordance with Section 10.01 of the Existing Credit Agreement, the parties hereto desire to amend and restate the Existing Credit Agreement as provided herein.

The Borrowers have requested that the Lenders provide a revolving credit facility in an initial aggregate maximum principal amount not to exceed $100,000,000, and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

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

"Accelerated Borrowing Base Delivery Event" means each of the following: (i) the occurrence of any Specified Event of Default, or (ii) the failure of the Borrowers to maintain Availability at least equal to the greater of (a) twelve and one-half percent (12.5%) of the Loan Cap, and (b) $10,000,000, in either case, for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of an Accelerated Borrowing Base Delivery Event shall be deemed continuing (i) so long as such Specified Event of Default has not been waived, and/or (ii) if the Accelerated Borrowing Base Delivery Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Availability has exceeded the greater of (a) twelve and one-half percent (12.5%) of the Loan Cap, and (b) $10,000,000 for twenty (20) consecutive calendar days (or such shorter period as the Agent may agree in its sole discretion), in which case an Accelerated Borrowing Base Delivery Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of an Accelerated Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Accelerated Borrowing Base Delivery Event in the event that the conditions set forth in this definition again arise.

"Acceptable Document of Title" means, with respect to any Inventory of the Loan Parties which is in transit from a location outside of the United States to a location of the Loan Parties in the United States that is owned, leased or rented by a Loan Party, a non-negotiable seaway bill, airway bill or other bill of lading that (a) is issued by a common carrier which is not an Affiliate of the any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of a Loan Party or, if so requested by the Agent after the occurrence and during the continuance of an Event of Default, to the order of the Agent, and (c) is not subject to any Lien (other than in favor of the Agent and Liens described in clauses (a), (b), (e) and (o) of the definition of Permitted Encumbrances), and (d) is on terms otherwise reasonably acceptable to the Agent.

"Accommodation Payment" has the meaning provided therefor in Section 10.21(c).

"Account" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card.

"ACH" means automated clearing house transfers.

"Acquisition" means, with respect to any Person (a) an investment or a purchase of a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, in each case (a) through (c) for which the aggregate consideration payable exceeds $15,000,000 in any Fiscal Year (unless a Specified Event of Default then exists or would arise therefrom, in which case all such acquisitions regardless of amount shall be deemed an "Acquisition"), in each case in any transaction or group of transactions which are part of a common plan.

"Additional Commitment Lender" means each Person not then a Lender furnishing a Commitment and each existing Lender increasing its Commitment as provided in Section 2.15 or providing a Commitment having an Extended Maturity Date as provided in Section 2.17.

"Additional Commitment" has the meaning provided therefor in Section 2.17(c).

"Adjusted LIBOR Rate" means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16th of one percent (1%)) equal to the LIBOR Rate for such Interest Period multiplied by the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

"Adjustment Date" means the first day of each Fiscal Quarter, commencing with the first Fiscal Quarter to occur three months following the Effective Date.

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

"Affiliate" means, with respect to any Person, (a) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (b) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (c) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (d) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person.

"Agent" means Bank of America in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor thereto.

"Agent Parties" has the meaning provided therefor in Section 10.02(c).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Aggregate Commitments" means the sum of the Commitments. As of the Effective Date, the Aggregate Commitments are $100,000,000.

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning provided therefor in Section 10.21(d).

"Applicable Lenders" means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" means:

(a) from and after the Effective Date until the first Adjustment Date, the percentages set forth in Level II of the pricing grid below; and

(b) from and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Average Daily Availability as of the Fiscal Quarter ended immediately preceding such Adjustment Date; provided that if any financial statements or any Borrowing Base Certificates are at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in such financial statements or any Borrowing Base Certificates otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately and retroactively recalculated at such higher rate for any applicable periods and shall be due and payable on demand (after netting out, during the same relevant period solely to the extent that such period is not more than two Fiscal Quarters prior to the relevant date of adjustment, any payments of interest and fees paid during such period which have been determined to have been in excess of what was owed by the Borrowers as a result of a proper calculation of the Average Daily Availability that would have resulted in lower pricing for such period).

Level	Average Daily Availability	LIBOR Margin for Revolving Loans	Base Rate Margin for Revolving Loans
I	Greater than 67% of the Aggregate Commitments	1.25%	0.25%
II	Less than 67% of the Aggregate Commitments but less than or equal to 33% of the Aggregate Commitments	1.50%	0.50%
III	Less than 33% of the Aggregate Commitments	1.75%	0.75%

"Applicable Percentage" means, with respect to all of the Obligations (excluding Other Liabilities) due to any Lender at any time, the percentage (carried out to the ninth decimal place) resulting from dividing (x) such Lender's Commitment at such time (or if the commitments of each Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Commitments have expired, then the sum of the outstanding principal balance of the Revolving Loans owing to such Lender plus the outstanding L/C Obligations owing to such Lender at such time), by (y) the Aggregate Commitments (or if the commitments of each Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Commitments have expired, then the Total Outstandings as of such time). The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, at any time of calculation, (a) with respect to Commercial Letters of Credit, a per annum rate equal to fifty percent (50%) of the Applicable Margin for LIBOR Rate Loans, and (b) with respect to Standby Letters of Credit, a per annum rate equal to the Applicable Margin for LIBOR Rate Loans.

"Appraised Value" means, with respect to Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Inventory as set forth in the inventory stock ledger of the Borrowers, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Arranger" means Bank of America and Wells Fargo, in their capacities as joint lead arrangers.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation of any Person, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Auto-Extension Letter of Credit" has the meaning provided therefor in Section 2.03(b)(iii).

"Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) Loan Cap

minus

(b) The Total Outstandings.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the Commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any of the factors taken into account in determining the Appraised Value, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral or the amount that the Agent would likely receive upon the Liquidation of the Collateral, (b) to reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, (d) to reflect any other circumstances which would likely adversely affect the value of the Collateral, or (e) to reflect any circumstances which adversely affect the enforceability or priority of the Agent's Liens on the Collateral. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) reserves based on: (i) rent; (ii) with respect to Eligible In-Transit Inventory, customs duties, and other costs to release Inventory which is being imported

into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which may have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party; provided that no Availability Reserves on account of such salaries, wages and benefits shall be imposed unless a Cash Dominion Event has occurred and is continuing, (v) Customer Credit Liabilities, (vi) customer deposits, (viii) reserves for reasonably anticipated changes in the Appraised Value between appraisals, (viii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral, (ix) Cash Management Reserves, and (x) Bank Products Reserves; provided that no Bank Products Reserves on account of liabilities and obligations of the Loan Parties in respect of Swap Contracts owing to a Credit Party shall be imposed unless Availability is less than twenty-five percent (25%) of the Borrowing Base. Upon the determination by the Agent, in its Permitted Discretion, that an Availability Reserve should be established or modified, the Agent shall notify the Lead Borrower, to the extent required hereunder. The amount of any Availability Reserve established by the Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by the Agent in its Permitted Discretion.

"Average Daily Availability" shall mean the average daily Availability for the immediately preceding Fiscal Quarter.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means Bank of America, N.A. and its successors.

"Bank Products" means any services or facilities provided to any Loan Party or any Restricted Subsidiary thereof by the Agent, any Lender, or any of their respective Affiliates, including, without limitation, on account of (a) Swap Contracts, (b) leasing, and (c) supply chain finance services (including, without limitation, trade payable services and supplier accounts receivable purchases), but excluding Cash Management Services.

"Bank Product Reserves" means such reserves as the Agent from time to time determine in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate"; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the LIBOR Rate for a one month interest period as determined on such day, plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in Bank of America's prime rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. "Blocked Account" has the meaning provided therefor in Section 6.12(a)(ii).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Agent, establishing control (as defined in the UCC) of such account by the Agent and whereby the Blocked Account Bank agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

"Blocked Account Bank" means each bank or other financial institution with whom deposit accounts, securities accounts or commodities accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated or proceeds of Collateral are maintained and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof or the Security Agreement.

"Bookrunning Manager" means Bank of America and Wells Fargo, in their capacities as joint bookrunning manager.

"Borrower Materials" has the meaning provided therefor in Section 6.02.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a Revolving Borrowing or a Swing Line Borrowing, as the context may require.

"Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by 90%;

plus

(b) the Cost of Eligible Inventory, net of Inventory Reserves, *multiplied by* 90% (provided that, during the Seasonal Overadvance Period, such advance rate shall be increased by the Seasonal Advance Rate Increase Percentage), *multiplied by* the Appraised Value of such Eligible Inventory;

plus

(c) subject to the last proviso of this definition below, the Cost of Eligible In-Transit Inventory, net of Inventory Reserves, *multiplied by* 90% (provided that, during the Seasonal Overadvance Period, such advance rate shall be increased by the Seasonal Advance Rate Increase Percentage), *multiplied by* the Appraised Value of such Eligible In-Transit Inventory;

minus

(d) the amount of all Availability Reserves at such time;

provided that in no event shall the amounts available to be borrowed against Eligible In-Transit Inventory hereunder exceed the In-Transit Cap.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete in all material respects by a Responsible Officer of the Lead Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent's Office is located and, if such day relates to any LIBOR Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

"Capital Expenditures" means, with respect to any Person for any period, all expenditures paid in cash, in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, provided that "Capital Expenditures" shall not include (a) any additions, replacements, restorations or substitutions to property, plant and equipment and other capital expenditures made with (i) the proceeds from any Permitted Disposition, to the extent that the proceeds therefrom are utilized (or are contractually committed to be utilized) for capital expenditures within twelve (12) months of the receipt of such proceeds, (ii) proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Loan Parties, or (iii) the proceeds of any Equity Interests issued or capital contributions received by any Loan Party or any Restricted Subsidiary in connection with such capital expenditures, or (b) any expenditures that are (i) accounted for as capital expenditures of such person and that actually are paid for by a third party (excluding Holdings, the Borrowers or any Subsidiary thereof) and for which neither Holdings, the Borrowers nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period) or (ii) financed with tenant improvement allowances (or similar real estate incentive programs), (c) interest capitalized during such period, (d) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business, (e) Investments in respect of a Permitted Acquisition.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateral Account" means a non-interest bearing account established by one or more of the Loan Parties with Bank of America, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(g) or 8.02(c).

"Cash Collateralize" means to deposit in the Cash Collateral Account or to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the Agent, the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Dominion Event" means either (a) the occurrence and continuance of any Specified Event of Default, or (b) the failure of the Borrowers to maintain Availability of at least the greater of (i) twelve and one-half percent (12.5%) of the Loan Cap, and (ii) $10,000,000, in either case, for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing at the Agent's option (a) so long as such Specified Event of Default has not been waived, and/or (b) if the Cash Dominion Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Availability has exceeded the greater of (i) twelve and one-half percent (12.5%) of the Loan Cap, and (ii) $10,000,000 for twenty (20) consecutive calendar days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement.

"Cash Equivalents" means any of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into; and

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above.

"Cash Management Reserves " means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any cash management services or facilities provided to any Loan Party or any Restricted Subsidiary thereof by the Agent or any Lender or any of their respective Affiliates, including, without limitation, (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services, (d) foreign exchange facilities, (e) purchase cards and (f) credit or debit card services.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority

requiring compliance by any of the Agent, any Lender, any L/C Issuer or the Swing Line Lender (or any lending office of such Person or by such Person's holding company, if any); provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) at any time prior to the creation of a Public Market, the Permitted Holders shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in Holdings representing more than 50% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis unless the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise, to elect or designate for election at least a majority of the board of directors of the Holdings; or

(b) at any time after the creation of a Public Market, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of (x) 35% or more of the Equity Interests of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right), or (y) a percentage that is greater than the percentage of the Equity Interests of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings that is then beneficially owned by the Permitted Holders; unless, in the case of either clause (x) or (y) above, the Permitted Holders have, at such time and at all times thereafter, the right or the ability by voting power, contract or otherwise, to elect or designate for election at least a majority of the board of directors of Holdings.

"Closing Date" means the closing date of the Existing Credit Agreement, which date is May 1, 2015.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) any landlord of Real Estate leased by any Loan Party, pursuant to which each such Person described in clauses (a) or (b), as applicable, (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with reasonable access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Collection Account" has the meaning provided therefor in Section 6.12(c).

"Commercial Letter of Credit" means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

"Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commitment Fee" has the meaning provided therefor in Section 2.09.

"Commitment Fee Percentage" means, with respect to each Fiscal Quarter, (a) if the average daily Total Outstandings for the immediately preceding Fiscal Quarter are greater than 50% of the Aggregate Commitments, 0.25% per annum, or (b) if the average daily Total Outstandings for the immediately preceding Fiscal Quarter are less than or equal to 50% of the Aggregate Commitments, 0.375% per annum.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) "Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Confirmation and Ratification Agreement" means that certain Confirmation and Ratification Agreement dated as of the Effective Date by and among the Loan Parties and the Agent.

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

"Consent" means actual consent given by a Lender from whom such consent is sought; provided that after the passage of ten (10) Business Days from receipt of written notice to a Lender from the Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender's consent or objection to such course of action, such Lender shall be deemed to have withheld consent to such action.

"Consolidated" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis for the most recently completed Measurement Period, plus, without duplication, (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income Taxes, (iii) depreciation and amortization expense, (iv) non-cash charges and non-cash items for stock-based compensation or other non-cash equity based awards paid to officers, directors or employees, (v) management and transaction fees and expenses paid to Sponsor or its Affiliates to the extent permitted under Section 7.09(e), (vi) non-recurring expenses reducing such Consolidated Net Income in connection with (A) pension liabilities, and (B) tax payments payable in accordance with Accounting Standards Codification 740-10, (vii) non-recurring restructuring expenses reducing such Consolidated Net Income in an aggregate amount not to exceed $3,000,000 for such Measurement Period, (viii) any reasonable fees, expenses or charges related to any issuance of Equity Interests (including pursuant to a Public Offering) or the incurrence or repayment of Indebtedness permitted to be incurred hereunder, including a Permitted Refinancing thereof, (xi) reasonable cash expenses or cash charges arising from or relating to Permitted Store Closings in an aggregate amount not to exceed $2,500,000 for such Measurement Period, (xii) any other non-cash expenses, charges, expenses, losses or items (including any write-offs or write-downs) reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Lead Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Lead Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period), (xiii) reasonable fees, costs and expenses incurred in connection with the Transactions, (xiv) the amount of any proceeds from business interruption insurance received during such period, to the extent the associated losses arise out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing such Consolidated Net Income and (xv) reasonable fees, costs and expenses in connection with any amendments, consents or waivers under the Loan Documents or with respect to any Permitted Acquisition (whether or not consummated), (xvi) pro forma adjustments, including pro forma "run rate" cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to acquisitions, dispositions and other specified transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and projected by the Lead Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within four fiscal quarters after the date of consummation of such acquisition, disposition or other specified transaction or the initiation of such restructuring initiative, cost savings initiative or other initiatives (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to

be taken or with respect to which substantial steps have been taken or are expected to be taken); provided that amounts added back pursuant to this clause (xvi), together with amounts added back pursuant to clauses (xvii) and (xviii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis provided further that such cap shall not apply to adjustments made in accordance with Regulation S-X, (xvii) costs, charges, reserves and expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other synergies and similar initiatives and business optimization and other restructuring and integration charges, provided that amounts added back pursuant to this clause (xvii), together with amounts added back pursuant to clauses (xvi) and (xviii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis, (xviii) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period, provided that amounts added back pursuant to this clause (xviii), together with amounts added back pursuant to clauses (xvi) and (xvii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis, and (ixx) reasonable fees, costs and expenses incurred in connection with any debt financing transaction or initial public offering, (in each case for the items described in this clause (a), of or by Lead Borrower and its Restricted Subsidiaries for such Measurement Period), minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income which do not represent a cash item in such period or any future period (in each case for the items described in this clause (b), of or by the Lead Borrower and its Subsidiaries for such Measurement Period), all as determined on a Consolidated basis in accordance with GAAP. For clarity, to the extent Restricted Payments made to Holdings pursuant to Sections 7.06(c) and 7.06(d) hereof are not deducted by the Lead Borrower in the determination of Consolidated Net Income, such amounts may not be utilized to increase Consolidated Net Income for the purposes of calculating Consolidated EBITDA (notwithstanding that the payments made under Sections 7.06(c) and 7.06(d) are of the type described in clause (a) of this definition).

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA for the most recently completed Measurement Period minus (ii) Capital Expenditures paid in cash during such period (other than Financed Capital Expenditures), minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash during such period (but not less than zero) to (b) Debt Service Charges, of or by the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Interest Charges" means, for any Measurement Period, the sum, without duplication, of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs and net of interest income, and (b) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP, in each case of or by the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, as of any date of determination, the net income of the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP, provided, however, that there shall be excluded, without duplication, (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the income (or loss) of any Restricted Subsidiary during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to the Lead Borrower or another Loan Party during such period, (c) the income (or loss) of such Restricted Subsidiary during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Lead Borrower or any of its Restricted Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Restricted Subsidiaries or that Person's assets are acquired by the Lead Borrower or any of its Restricted Subsidiaries, (d) the income of any direct or indirect Restricted Subsidiary of the Lead Borrower to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary, except that the Lead Borrower's equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (e) the cumulative effect of any change in accounting principles, including any increase in amortization or depreciation, any adjustments to inventory basis or rent expenses or any one-time charges resulting from purchase accounting in connection with any Permitted Acquisition.

"Consolidated Total Debt" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrowers and their Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with any Permitted Acquisition), consisting of Indebtedness described in clauses (a), (b) and (c) of the definition thereof minus (b) without duplication, the aggregate amount of all cash and Cash Equivalents included in the consolidated balance sheet of the Borrowers and their Restricted Subsidiaries as of such date that are not listed as "restricted" for purposes of GAAP, which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date; provided that, Consolidated Total Debt will not include Indebtedness that is non-recourse to the Borrowers and the Restricted Subsidiaries and Indebtedness in respect of any (1) letter of credit, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Swap Obligations, except any unpaid termination payments thereunder. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Swap Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Convert", "Conversion" and "Converted" each refers to a conversion of Revolving Loans of one Type into Revolving Loans of the other Type.

"Cost" means the lower of cost or market value of Inventory, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger. "Cost" does not include inventory capitalization costs used in the Borrowers' calculation of cost of goods sold.

"Covenant Compliance Event" means the failure of the Borrowers to maintain Specified Availability of at least the greater of (i) ten percent (10%) of the Loan Cap, and (ii) $7,500,000. For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing if the Covenant Compliance Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Specified Availability has exceeded the greater of (i) ten percent (10%) of the Loan Cap, and (ii) $7,500,000 for twenty (20) consecutive calendar days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

"Credit Card Issuer" shall mean any person (other than a Borrower, another Loan Party or Restricted Subsidiary thereof) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, JCB, and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Alliance Data Systems Corporation and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary (including, without limitation, Alliance Data Systems Corporation) who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Notifications" has the meaning provided therefor in Section 6.12(a)(i).

"Credit Card Receivables" means each "payment intangible" (as defined in the UCC) together with all income, royalties, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party or otherwise relating to credit or debit cards or related services, in each case in the ordinary course of its business.

"Credit Extensions" mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) each L/C Issuer, (iv) the Arranger and the Bookrunning Manager, (v) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (vi) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vii) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means (a) all reasonable and documented out-of-pocket expenses incurred by the Agent, MLPFS and their respective Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent and MLPFS, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examiners, and (E) all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (F) environmental site assessments, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of the Credit Parties' rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral or in connection with any proceeding under any Debtor Relief Laws, or (D) any workout, restructuring or negotiations in respect of any Obligations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer and its Affiliates in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable and documented out-of-pocket expenses incurred by the Credit Parties who are not the Agent, MLPFS, the L/C Issuer or any Affiliate of any of them, including in the course of any work-out or restructuring of the Loans or other Obligations during the pendency, after the occurrence and during the continuance of any Event of Default, provided that, such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

"Cure Amount" has the meaning specified in Section 8.04(1).

"Cure Deadline" has the meaning specified in Section 8.04(1).

"Cure Right" has the meaning specified in Section 8.04(1).

"Customer Credit Liabilities" means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits of the Borrowers.

"Customs Broker/Carrier Agreement" means an agreement in form and substance reasonably satisfactory to the Agent among a Loan Party, a customs broker, freight forwarder, consolidator, or other carrier, and the Agent, in which the customs broker, freight forwarder, consolidator, or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory and other property solely as directed by the Agent; it being agreed that the Agent shall only give such notice after the occurrence and during the continuance of an Event of Default.

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"Debt Service Charges" means for any Measurement Period, the sum of (a) Consolidated Interest Charges paid in cash or required to be paid in cash in respect of debt for borrowed money (including Capital Lease Obligations) for such Measurement Period (excluding all upfront and closing fees paid on the Closing Date and the Effective Date under, or in connection with, this Agreement), plus (b) scheduled principal payments paid in cash or required to be paid in cash on account of Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Consolidated basis in accordance with GAAP.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the then Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus two percent (2%) per annum, and (c) with respect to all other Obligations (excluding Other Liabilities), an interest rate equal to the Base Rate, plus the then Applicable Margin for Base Rate Loans, plus two percent (2%) per annum.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two (2) Business Days of the date when due, (b) has notified the Lead Borrower, the Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had 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, 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; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Lead Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of comprehensive Sanctions, at the time of this Agreement including Cuba, Iran, North Korea, Sudan, Syria, or the Crimea region of Ukraine.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by the Borrowers or a Restricted Subsidiary in connection with a Disposition that is so designated as Designated Non-Cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on such Designated Non-Cash Consideration.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions, of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Lender" means (a) any competitor of Holdings or the Lead Borrower or its Subsidiaries identified by or on behalf of the Lead Borrower or the Sponsor to (i) the Arrangers from time to time on or prior to the Effective Date or (ii) the Agent from time to time after the Effective Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by or on behalf of the Lead Borrower or the Sponsor to the Arrangers prior to the Effective Date and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) (excluding, in the case of clause (a), bona fide debt funds) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Lead Borrower or the Sponsor to (i) the Arrangers on or prior to the Effective Date or (ii) the Agent from time to time after the Effective Date; it being understood and agreed that the identification of any Person as a Disqualified Lender after the Effective Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan until such time such Person no longer constitutes a Lender. The identity of Disqualified Lenders shall be made available upon request, but not posted or distributed, to all Lenders and prospective assignees.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the Maturity Date; provided, however, that (a) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock, (b) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by Holdings or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, resignation, death or disability, and (c) if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder solely by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Holdings and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"Dollars" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States, any State thereof or the District of Columbia (excluding, for the avoidance of doubt, any Subsidiary organized under the laws of Puerto Rico or any other territory).

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Eligible Assignee" means (a) a Lender or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities; and (e) any other Person (other than a natural Person) satisfying the requirements of Section 10.06(b) hereof; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include a Disqualified Lender, a Permitted Holder, a Loan Party or any of their respective Affiliates or Subsidiaries.

"Eligible Credit Card Receivables" means at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Borrower from a Credit Card Issuer or Credit Card Processor, and in each case is originated in the ordinary course of business of such Borrower, and (ii) in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (i) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent in its Permitted Discretion, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivables which do not constitute a "payment intangible" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

(c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Agent, or (ii) with respect to which a Borrower does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which a Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or a Credit Card Processor of the applicable credit card which is the subject of any bankruptcy or insolvency proceedings;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or a Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables; or

(i) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection or which do not meet such other reasonable eligibility criteria for Credit Card Receivables as the Agent may determine in its Permitted Discretion.

"Eligible In-Transit Inventory" means, as of any date of determination thereof, without duplication of other Eligible Inventory, In-Transit Inventory:

(a) which has been received in a foreign location by a freight forwarder as consolidator acting on behalf of, and as agent for, a Borrower and which has been shipped from a foreign location for receipt by a Borrower, but which has not yet been delivered to such Borrower, which In-Transit Inventory is scheduled for delivery within fifty (50) days or less from the date of determination with respect to Inventory;

(b) for which the purchase order is in the name of a Borrower and title and risk of loss has passed to such Borrower;

(c) for which an Acceptable Document of Title has been issued, and in each case as to which the Agent has control (as defined in the UCC) over the documents of title which evidence ownership of the subject Inventory (including by the delivery of a Customs Broker/Carrier Agreement or as otherwise agreed by the Agent in its Permitted Discretion);

(d) which is insured to the reasonable satisfaction of the Agent (including, without limitation, marine cargo insurance and/or stock throughput insurance);

(e) for which either payment of the purchase price has been made by a Borrower, the purchase price is supported by a Commercial Letter of Credit or the purchase price is on terms consistent with past practices of such Borrower and not overdue; and

(f) which otherwise would constitute Eligible Inventory; provided that the Agent may, in its Permitted Discretion, either establish an Inventory Reserve or exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event the Agent reasonably determines that such Inventory is subject to any Person's right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise materially adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of Inventory of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowers' business deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Agent, (i) comply in all material respects with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (ii) are not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents, or any other Permitted Encumbrance described in clauses (a), (b), (e), and (o) of such definition);

(b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Loan Party;

(c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States (excluding territories or possessions of the United States) or Puerto Rico;

(d) Inventory that is not located at a location that is owned or leased by a Borrower, except (i) Inventory in transit between such owned or leased locations, or (ii) to the extent that the Borrowers have furnished the Agent with (A) any UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location;

(e) Inventory that is located in a distribution center, warehouse or other bailee location leased by a Borrower unless the applicable lessor has delivered to the Agent a Collateral Access Agreement or the Agent has waived such requirement in writing in its Permitted Discretion;

(f) without duplication of any of the factors taken into account in determining Appraised Value, Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

(g) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances described in clauses (a), (b), (e) or (o) of such definition);

(h) Inventory that is not insured in compliance with the provisions of Section 5.09 hereof;

(i) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(j) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party as to which any Borrower or any of its Subsidiaries has received notice from such third party of a dispute in respect of any such agreement or a breach of any such agreement; or

(k) Inventory acquired in a Permitted Acquisition or which is not of the type usually sold in the ordinary course of the Borrowers' business, unless and until the Agent has completed or received (A) an appraisal of such Inventory from appraisers reasonably satisfactory to the Agent and establishes Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (B) such other due diligence as the Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Agent.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any Hazardous Materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the UCC and shall also mean all furniture, store fixtures, motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Loan Party's business, and any and all accessions or additions thereto, and substitutions therefor.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan, other than those disclosed on Schedule 5.11 as of the Effective Date; (b) the withdrawal of any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan or Multiemployer Plan, or the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan or Multiemployer Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a Multiemployer Plan is in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA (other than with respect to contributions not yet due), other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

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

"Event of Default" has the meaning provided therefor in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Excluded Accounts" means any payroll, employee benefits, workers compensation, trust and tax withholding accounts funded by the Loan Parties in the ordinary course of business.

"Excluded Subsidiary" means any Foreign Subsidiary, any Foreign Subsidiary Holding Company, any Immaterial Subsidiary and any Unrestricted Subsidiary.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 10.25 and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or security interest becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment (or other interest) pursuant to a law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Lead Borrower under Section 10.13) or (ii) such Recipient changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e), (d) any U.S. federal withholding Taxes imposed pursuant to FATCA, and (e) any back-up withholding Taxes.

"Executive Order" has the meaning provided therefor in Section 10.18.

"Existing Credit Agreement" has the meaning given to such term in the introductory paragraph to this Agreement.

"Existing Letters of Credit" means those certain Letters of Credit issued and outstanding as of the Effective Date pursuant to the Existing Credit Agreement, as more fully described on Schedule 1.03 hereto.

"Expected Cure Amount" has the meaning specified in Section 8.04(2).

"Extended Maturity Date" means the date that each of the Agent, the Lead Borrower and each Extending Lender agree in accordance with Section 2.17.

"Extended Commitments" has the meaning provided therefor in Section 2.17(a).

"Extending Lender" has the meaning provided therefor in Section 2.17(b).

"Extension Amendment" has the meaning provided therefor in Section 2.17(d). "Extension Election" has the meaning provided therefor in Section 2.17(b).

"Extension Request" has the meaning provided therefor in Section 2.17(a).

"Extension Series" has the meaning provided therefor in Section 2.17(a).

"Facility Guaranty" means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any applicable intergovernmental agreements that implement any of the foregoing, and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent.

"Fee Letter" means the Fee Letter, dated October 23, 2017, among the Borrowers and the Agent, and acknowledged by MLPFS.

"FILO Tranche" has the meaning specified in Section 2.15(f).

"Financed Capital Expenditures" shall mean, with respect to any Person and for any period, Capital Expenditures made by such Person during such period that are financed with the proceeds of Indebtedness (other than Credit Extensions) or net proceeds of any Disposition, net proceeds of any casualty event, any incurrence of Indebtedness (other than Credit Extensions) or any issuance of Equity Interests (other than Disqualified Stock or any other issuance of Equity Interests which increases any available basket hereunder).

"Financial Covenant" means the covenant specified in Section 7.15.

"Fiscal Month" means each monthly accounting period of the Lead Borrower calculated in accordance with the National Retail Federation calendar.

"Fiscal Quarter" means each quarterly accounting period of the Lead Borrower consisting of successive 13-week periods (each such 13 week period to begin on a Sunday and end on a Saturday) of the Lead Borrower of any Fiscal Year; provided that for any 53-week Fiscal Year, the last Fiscal Quarter of such Fiscal Year shall consist of the successive 14-week period from and including the first day after the third Fiscal Quarter of such Fiscal Year through and including the last day of such Fiscal Year.

"Fiscal Year" means the annual accounting period of Borrowers ending on the Saturday nearest to January 31st in each calendar year.

"Foreign Asset Control Regulations" has the meaning provided therefor in Section 10.18.

"Foreign Lender" means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means any Subsidiary that is (i) a CFC, or (ii) a direct or indirect Subsidiary of a CFC.

"Foreign Subsidiary Holding Company" means any Subsidiary, substantially all of the assets of which are Equity interests of one or more Foreign Subsidiaries.

"Foreign Vendor" means a Person that sells In-Transit Inventory to a Borrower.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien), provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. Notwithstanding the foregoing, "Guarantee" shall not include liabilities for indemnities under laws, contracts, arrangements and agreements incurred in the ordinary course of business (including liabilities for director, officer, employee and agent indemnification obligations). The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means, collectively, (a) Holdings and each Subsidiary of Holdings (other than any Excluded Subsidiary) existing on the Closing Date and each other Subsidiary of Holdings that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11, and (b) with respect to Other Liabilities owing by any Loan Party or any of its Restricted Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Section 1 of the Facility Guaranty and Section 10.25 hereof) under the Facility Guaranty, each Borrower.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holdings" means Torrid Inc., a Delaware corporation, and the owner of 100% of the issued and outstanding Equity Interests in the Lead Borrower.

"Honor Date" has the meaning provided therefor in Section 2.03(c)(i).

"Hot Topic Tri-Party Agreement" means that certain Agreement dated as of the Closing Date by and among the Loan Parties, Hot Topic, Inc. and certain of its Affiliates, and the Agent, as confirmed and ratified pursuant to the Confirmation and Ratification Agreement.

"Immaterial Subsidiary" means, on any date, any Subsidiary of Holdings that is not a Material Domestic Subsidiary or Material Foreign Subsidiary.

"Increase Effective Date" has the meaning provided therefor in Section 2.15(d).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business not past due for more than ninety (90) days after the date on which such trade account payables were created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided that, other than for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, if such Person has not assumed or otherwise become liable for such indebtedness, such indebtedness shall be measured at the fair market value of such property securing such indebtedness at the time of determination;

(f) all Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person prior to the date that is 91 days after the scheduled Maturity Date (including, without limitation, Disqualified Stock but excluding any tax distributions required to be made with respect to entities that are treated as partnerships or disregarded entities for federal income tax purposes), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning provided therefor in Section 10.04(b).

"Information" has the meaning provided therefor in Section 10.07.

"Initial Maturity Date" has the meaning provided therefor in the definition of Maturity Date.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Intercompany Subordinated Indebtedness" means that certain Subordinated Indebtedness in the aggregate principal amount of $45,000,000 pursuant to that certain promissory note dated as of the Closing Date, made by Holdings in favor of Torrid Holding LLC, a Delaware limited liability company ("TopCo"), which Indebtedness is subordinated to the Obligations pursuant to the Intercompany Subordination Agreement.

"Intercompany Subordination Agreement" means that certain Subordination Agreement dated as of the Closing Date, by and among the Loan Parties and TopCo and acknowledged by the Agent, as confirmed and ratified pursuant to the Confirmation and Ratification Agreement.

"Interest Payment Date" means, (a) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first Business Day of each month and the Maturity Date.

"Interest Period" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or Converted to or continued as a LIBOR Rate Loan and ending on the date one, three or six (or, to the extent available to all Lenders, twelve) months thereafter, as selected by the Lead Borrower in its Revolving Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date; and

(d) notwithstanding the provisions of clause (iii), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBOR Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent Conversion or continuation of such Borrowing.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Lead Borrower's and/or its Subsidiaries' internal controls over financial reporting.

"In-Transit Cap" means twenty percent (20%) of the Borrowing Base (calculated without inclusion of amounts described in clause (d) of the definition thereof).

"In-Transit Inventory" means Inventory of a Borrower which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrower from a location outside of the continental United States to a location of a Borrower that is within the continental United States.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any of the factors taken into account in determining "Appraised Value", such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

(a) obsolescence;

(b) seasonality;

(c) Shrink;

(d) imbalance;

(e) change in Inventory character;

(f) change in Inventory composition;

(g) change in Inventory mix;

(h) mark-downs (both permanent and point of sale); and

(i) retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events.

Upon the determination by any Agent, in its Permitted Discretion, that an Inventory Reserve should be established or modified, such Agent shall notify the Lead Borrower to the extent required hereunder.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and any Borrower (or any other Loan Party) or in favor the L/C Issuer and relating to any such Letter of Credit.

"Joinder Agreement" means an agreement, in form reasonably satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may reasonably determine.

"Junior Indebtedness" means any Indebtedness for borrowed money of any Loan Party in an amount greater than $10,000,000 that is unsecured or secured on the Collateral on a junior basis to the Liens securing the Obligations of such Loan Party arising under the Loan Documents.

"Landlord Lien State" means such states in which a landlord's claim for rent may have priority over the Lien of the Agent in any of the Collateral.

"Latest Maturity Date" means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest termination date of any Extended Commitment or Additional Commitment, as applicable, as extended in accordance with this Agreement from time to time.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on or prior to the date when required to be reimbursed by the Borrowers or refinanced as a Revolving Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means (a) Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Lender selected by the Agent in its reasonable discretion), and (b) any other Lender approved by the Agent and the Lead Borrower in their reasonable discretion. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Borrower" has the meaning specified in the introductory paragraph hereto.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrower and the Agent.

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder and shall include the Existing Letters of Credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is five (5) Business Days prior to the Maturity Date then in effect.

"Letter of Credit Fee" has the meaning provided therefor in Section 2.03(i).

"Letter of Credit Sublimit" means an amount equal to $15,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Commitments.

"LIBOR Borrowing" means a Borrowing comprised of LIBOR Rate Loans.

"LIBOR Rate" means the per annum rate of interest (rounded upwards, if necessary, to the next 1/16th of one percent (1%)) and in no event less than zero) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice.

"LIBOR Rate Loan" means a Revolving Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Laws as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or "going-out-of-business", "store closing" or other similar sale or any other Disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loan" means an extension of credit by a Lender to the Borrowers under Article II in the form of a Revolving Loan or a Swing Line Loan.

"Loan Account" has the meaning provided therefor in Section 2.11(a).

"Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate Commitments or (b) the Borrowing Base.

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the Credit Card Notifications, the Security Documents, the Facility Guaranty, the Intercompany Subordination Agreement, the Hot Topic Tri-Party Agreement, the Confirmation and Ratification Agreement, and any other instrument or agreement now or hereafter executed and delivered in connection herewith.

"Loan Parties" means, collectively, the Borrowers and the Guarantors.

"Management Fees" means management fees payable by the Loan Parties pursuant to the Sponsor Management Agreement.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its material obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or the Lenders under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party the breach or termination of which could reasonably be expected to result in a Material Adverse Effect.

"Material Domestic Subsidiary" means, as of the Effective Date and thereafter at any date of determination, each of the Borrowers' Domestic Subsidiaries that is a Restricted Subsidiary (a) whose Total Assets at the last day of the most recent Measurement Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Domestic Subsidiary at the last day of the most recent Measurement Period) were equal to or greater than 5.0% of Total Assets of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries at such date or (b) whose gross revenues for such Measurement Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Domestic Subsidiary for such Measurement Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries for such Measurement Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Effective Date (or such longer period as the Agent may agree in its sole discretion), Domestic Subsidiaries that are not Material Domestic Subsidiaries solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Measurement Period) 7.5% of Total Assets of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Measurement Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Domestic Subsidiaries for such Measurement Period) 7.5% of the consolidated gross revenues of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Measurement Period, then the Lead Borrower shall, not later than thirty (30) days after the date by which financial statements for such Measurement Period were required to be delivered pursuant to this Agreement (or such longer period as the Agent may agree in its reasonable discretion), (i) designate in writing to the Agent one or more of such Domestic Subsidiaries that are Restricted Subsidiaries as "Material Domestic Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries.

"Material Foreign Subsidiary" means, as of the Effective Date and thereafter at any date of determination, each of the Borrowers' Foreign Subsidiaries that are Restricted Subsidiaries (a) whose Total Assets at the last day of the most recent Measurement Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Foreign Subsidiary at the last day of the most recent Measurement Period) were equal to or greater than 5.0% of Total Assets of the Restricted Subsidiaries that are Foreign Subsidiaries at such date or (b) whose gross revenues for such Measurement Period (when taken together with the revenues of the Restricted Subsidiaries of such Foreign Subsidiary for such Measurement Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Restricted Subsidiaries that are Foreign Subsidiaries for such Measurement Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Effective Date (or such longer period as the Agent may agree in its sole discretion), Foreign Subsidiaries that are not Material Foreign Subsidiaries comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Foreign Subsidiaries at the last day of the most recent Measurement Period) 7.5% of Total Assets of the Restricted Subsidiaries that are Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Measurement Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Measurement Period) 7.5% of the consolidated gross revenues of the Restricted Subsidiaries that are Foreign Subsidiaries for such Measurement Period, then the Lead Borrower shall, not later than thirty (30) days after the date by which financial statements for such Measurement Period were required to be delivered pursuant to this Agreement (or such longer period as the Agent may agree in its reasonable discretion), designate in writing to the Agent one or more of such Foreign Subsidiaries that are Restricted Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true.

"Material Indebtedness" means Indebtedness (other than the Obligations but including Other Liabilities which constitute Indebtedness) of the Loan Parties in an aggregate principal amount exceeding $10,000,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included. For the avoidance of doubt, the Intercompany Subordinated Indebtedness shall constitute Material Indebtedness at all times hereunder.

"Maturity Date" means the later of (a) October 23, 2022 (the "Initial Maturity Date"), (b) with respect to any Lender which participates in any Extension Series pursuant to Section 2.17, such extended maturity date relating to such Extension Series as determined pursuant to such Section 2.17, and (c) with respect to any FILO Tranche, the maturity date applicable to such FILO Tranche in accordance with the terms hereof.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Measurement Period" means, at any date of determination, the most recently completed twelve Fiscal Months of Holdings and its Subsidiaries.

"MLPFS" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. "Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Lead Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Necessary Cure Amount" has the meaning specified in Section 8.04(2).

"Net Proceeds" means (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) minus (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), and (B) the reasonable and customary out-of-pocket fees, commissions and expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, on account of appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)) and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction (or such longer period as may apply in the event of an installment sale or similar transaction) as a result of any gain recognized in connection therewith.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Extension Notice Date" has the meaning provided therefor in Section 2.03(b)(iii).

"Note" means a Revolving Note and the Swing Line Note, as each may be amended, supplemented or modified from time to time.

"Notice Date" has the meaning provided therefor in Section 2.17.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Subsidiary thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Liabilities" means all obligations on account of (i) any Cash Management Services furnished to any of the Loan Parties or any of their Restricted Subsidiaries, and/or (ii) any Bank Product furnished to any of the Loan Parties and/or any of their Restricted Subsidiaries; provided that Other Liabilities of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

"Outstanding Amount" means (a) with respect to Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts or the refinancing of such unreimbursed amounts as Borrowings hereunder.

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made, Availability is less than zero.

"Participant" has the meaning provided therefor in Section 10.06(d).

"Participant Register" has the meaning provided therefor in Section 10.06(d).

"Patriot Act" has the meaning provided therefor in Section 10.17.

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Specified Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, (b) immediately after giving pro forma effect to such transaction or the making of such payment, the Pro Forma Availability Condition has been satisfied, (c) the Consolidated Fixed Charge Coverage Ratio for the Measurement Period preceding such transaction or the making of such payment shall be greater than or equal to 1.0 to 1.0, provided that the provisions of this clause (c) shall not be applicable if Availability, calculated in accordance with clause (b) hereof, immediately after giving pro forma effect to such transaction or payment and for the thirty (30) day period immediately preceding such transaction or payment is greater than or equal to seventeen and one-half percent (17.5%) of the Loan Cap; and (d) the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Responsible Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b) and (c) above, as applicable.

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan but excluding a Multiemployer Plan) that is maintained or is contributed to by the Lead Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law; provided that the foregoing condition shall only be required to be satisfied for any Acquisition (i) involving a merger, consolidation or acquisition of Equity Interests of a Person, (ii) of all or substantially all of the assets of a Person, or (iii) to the extent applicable Law, the Organization Documents of the Person which is the subject of such Acquisition, or the applicable purchase agreement, merger agreement or similar definitive documentation otherwise require such board approval;

(b) the Lead Borrower shall have furnished the Agent with reasonable prior written notice of such intended Acquisition;

(c) any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement or substantially the same lines of business (or reasonably related thereto) as one or more of the principal businesses of a Borrower;

(d) if the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an Acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a Borrower hereunder or as a Guarantor to the extent required pursuant to Section 6.12, and the Agent shall have received a first priority security interest in such Subsidiary's Equity Interests and property of such Subsidiary of the same nature as constitutes Collateral under the Security Documents (subject, in each case, to Permitted Encumbrances having priority by operation of applicable law); and

(e) the Loan Parties shall have satisfied the Payment Conditions.

"Permitted Discretion" means the Agent's good-faith and reasonable (from the perspective of a secured asset-based lender in credit facilities of the type contemplated hereby) business judgment and consistent with the Agent's customary practices in asset-based credit facilities of the type contemplated hereby. Notwithstanding the foregoing, it shall not be within Permitted Discretion for the Agent to establish Reserves which are duplicative of each other whether or not such Reserves fall under more than one Reserve category.

"Permitted Disposition" means any of the following:

(a) dispositions of Inventory in the ordinary course of business;

(b) bulk sales or other dispositions at arm's length of the Inventory of a Loan Party not in the ordinary course of business in connection with Permitted Store Closings;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;

(e) dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary;

(f) sales, transfers and dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(g) sales, transfers and dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party;

(h) as long as no Default or Event of Default then exists or would arise therefrom, sales of Real Estate of any Loan Party (or sales of any Person or Persons created to hold such Real Estate or the Equity Interests in such Person or Persons), including sale-leaseback transactions involving any such Real Estate pursuant to leases on market terms, as long as, (A) such sale is made for fair market value, and (B) in the case of any sale-leaseback transaction permitted hereunder, the Loan Parties shall have used commercially reasonable efforts to deliver to the Agent a Collateral Access Agreement duly executed by each such purchaser or transferee and on terms and conditions reasonably satisfactory to the Agent;

(i) to the extent constituting a Disposition, the making of Permitted Investments;

(j) leases, subleases, licenses and sublicenses of real or personal property (other than Intellectual Property) entered into by Loan Parties and their Subsidiaries in the ordinary course of business at arm's length and on market terms;

(k) Dispositions of Equipment to the extent that (i) such Equipment is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, or (iii) such Disposition is pursuant to a sale-leaseback transaction permitted hereunder;

(l) as long as no Change of Control would arise therefrom, the sale or issuance of any Equity Interests (other than Disqualified Stock) by Holdings or any Subsidiary thereof;

(m) the Disposition of any asset which is subject to or has sustained any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding;

(n) as long as no Default or Event of Default then exists or would arise therefrom, Dispositions of Intellectual Property that, in the judgment of a Loan Party, is no longer useful or necessary in its business or that of any Subsidiary;

(o) (i) so long as no Cash Dominion Event has then occurred and is continuing, Dispositions of cash and Cash Equivalents to the extent otherwise permitted hereby, and (ii) after the occurrence of a Cash Dominion Event, Dispositions of cash in the Excluded Accounts and proceeds of Loans made hereunder to pay expenses or engage in transactions otherwise permitted hereby;

(p) Dispositions of delinquent Accounts for collection purposes for fair value;

(q) other Dispositions not expressly permitted pursuant to the foregoing clauses (a) through (p), provided that (i) the aggregate fair market value (as determined by the Lead Borrower in good faith) of all assets Disposed of in reliance upon this clause (q) shall not exceed $15,000,000 in any calendar year, and (ii) no Event of Default then exists or would arise therefrom; and

(r) other Dispositions, so long as, the Borrowers or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Disposition) at least equal to the fair market value (measured at the time of contractually agreeing to such Disposition) of the assets sold or otherwise disposed of, and at least 75.0% of the consideration for such Disposition received by the Borrowers or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (r):

(i) any securities, notes or other obligations or assets received by the Borrowers or any Restricted Subsidiary from such transferee or in connection with such Disposition (including earnouts and similar obligations) that are converted by the Borrowers or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Disposition; and

(ii) any Designated Non-Cash Consideration received by the Borrowers or any Restricted Subsidiary in such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed $5.0 million (or, at the Borrowers' option, at the time of contractually agreeing to such Disposition), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrowers' option, either at the time of

contractually agreeing to such Disposition or at the time received and, in either case, without giving effect to any subsequent change(s) in value; *provided that*, in the event of (x) a Disposition of more than ten (10%) percent of assets of the type included in the Borrowing Base pursuant to a single transaction or a series of related transactions, the Borrowers shall deliver an updated Borrowing Base Certificate to the Agent, prepared on a pro forma basis after giving effect to such Disposition, and (y) in the event of a Disposition of Intellectual Property used or useful in connection with the assets included in the Borrowing Base, the purchaser, assignee or other transferee thereof agrees in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent, and *provided further* that in the case of a Disposition of Intellectual Property licensed by the Lead Borrower or one of its Restricted Subsidiaries from a third party, the transferee thereof shall be required to provide such a license only to the extent to which the applicable license gives it a right to do so.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet delinquent or are being contested in compliance with Section 6.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 6.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

(d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the Effective Date listed on Schedule 7.01 and Liens to secure any Permitted Refinancings of the Indebtedness with respect thereto;

(h) Liens on fixed or capital assets of any Loan Party which secure Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of the applicable assets, and (iii) such Liens shall attach only to the assets acquired, improved or refinanced with such Indebtedness and shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent;

(j) landlords' and lessors' statutory Liens in respect of rent not in default;

(k) possessory Liens in favor of brokers and dealers arising in connection with the acquisition of or disposition of Permitted Investments, provided that such liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course of business and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, Liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings (or similar filings under other applicable Law) regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(n) voluntary Liens on property (other than property of the type included in the Borrowing Base) in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(p) Liens in favor of any holder of Indebtedness permitted pursuant to clause (j) of the definition of "Permitted Indebtedness"; provided that such Liens shall be junior and subordinate to the Liens securing the Obligations and the holder of such Indebtedness shall have entered into an intercreditor and subordination agreement with the Agent on terms reasonably acceptable to the Agent;

(q) leases, licenses, subleases or sublicenses granted to other Persons in the ordinary course of business which do not (i) interfere in any material respect with the business of the Loan Parties or (ii) secure any Indebtedness for borrowed money;

(r) any interest or title of (i) a lessor or sublessor under any lease or sublease or (ii) a licensor or sublicensor under any license or sublicense, in each case entered into in the ordinary course of business, so long as such interest or title relates solely to the assets subject thereto;

(s) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(t) any interest or title of a lessor under any operating lease and all Liens on the underlying assets subject to such lease that affect such lessor's interest or title in such asset;

(u) Liens deemed to exist in connection with Investments in financial repurchase agreements that qualify as Cash Equivalents provided that such Liens do not extend to any assets other than the assets that are the subject of such repurchase agreement;

(v) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(w) Liens in favor of the L/C Issuer on cash collateral securing the obligations of a Defaulting Lender to fund risk participations hereunder;

(x) Liens in respect of the licensing of Intellectual Property in the ordinary course of business, to the extent such licensing is otherwise permitted hereunder;

(y) Liens upon In-Transit Inventory arising in the ordinary course of business in favor of Persons from time to time approved in writing by the Agent, subject to such conditions or documentation as the Agent, in its Permitted Discretion may set forth or require in such writing, and securing only obligations in favor of such Persons resulting from the transport of such In-Transit Inventory (and not associated with Indebtedness (whether for borrowed money or otherwise) or other unrelated obligations), which obligations are not overdue by more than sixty (60) days or are being contested in compliance with Section 6.04; provided that this clause (y) shall not be deemed to limit or impair any right of the Agent, in its Permitted Discretion, to establish, maintain or modify Reserves relative to Inventory subject to such Liens;

(z) other Liens securing obligations in an aggregate amount not to exceed $20,000,000; and

(aa) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (q) of the definition of Permitted Indebtedness; *provided* that to the extent such Liens are on assets constituting Collateral that is included in the Borrowing Base and other current asset collateral, as described in a customary intercreditor agreement entered into by the Agent (collectively, the "ABL Priority Collateral") (but

which shall not be required to be on assets constituting Collateral), together with any Permitted Refinancing in respect thereof, such Liens shall be secured on a junior basis to the Liens securing the Obligations, and the collateral agent in respect of such Indebtedness shall have entered into a customary intercreditor agreement reasonably acceptable to the Agent and the Borrowers.

"Permitted Holders" means the Sponsor.

"Permitted Indebtedness" means each of the following:

(a) Indebtedness outstanding on the Effective Date listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) (i) purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof in an aggregate amount not to exceed $20,000,000 at any time outstanding, and (ii) purchase money Indebtedness of any Loan Party to finance the acquisition of any real or personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, in connection with the potential addition of an additional distribution and/or fulfillment center facility and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof; provided that, in each case, if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(d) Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided that, if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(e) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business;

(f) obligations (contingent or otherwise) of any Loan Party or any Restricted Subsidiary thereof existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided that such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, has a final maturity which extends beyond the Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of a Loan Party);

(i) the Obligations;

(j) other secured Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed $20,000,000 at any time outstanding; provided that (i) to the extent such Indebtedness is secured, it is secured on the Collateral on a junior basis to the Liens securing the Obligations of such Loan Party arising under the Loan Documents, (ii) the weighted average life to maturity of such Indebtedness is greater than or equal to the weighted average life to maturity of the of the Commitments at the time such Indebtedness is incurred, and (iii) such Indebtedness does not mature or have any scheduled amortization or payments, repurchases or redemptions of principal (other than customary amortization payments), in each case, prior the Latest Maturity Date (or, in the case of Subordinated Indebtedness, 91 days after the Latest Maturity Date) of the Commitments at the time such Indebtedness is incurred;

(k) Subordinated Indebtedness;

(l) Guarantees (i) by any Loan Party and its Restricted Subsidiaries of any Indebtedness of any other Loan Party permitted hereunder and (ii) as long as no Default or Event of Default has occurred and is continuing or would arise therefrom, by any Loan Party and its Restricted Subsidiaries of any Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Loan Party to the extent such Guarantees comply with the provisions of clause (c)(iv) of the definition of "Permitted Investments";

(m) contingent liabilities arising with respect to customary indemnification obligations in favor of sellers in connection with Permitted Acquisitions;

(n) Indebtedness incurred by any Loan Party or any Restricted Subsidiary thereof in the ordinary course of business in connection with the financing of insurance premiums;

(o) to the extent constituting Indebtedness, Indebtedness due to the Sponsor on account of the accrual of Management Fees and transaction fees;

(p) unsecured Indebtedness not otherwise specifically described herein and in an aggregate principal amount not to exceed $30,000,000 at any time outstanding, so long as any such Indebtedness in an amount greater than $15,000,000 does not mature prior the Latest Maturity Date of the Commitments at the time such Indebtedness is incurred; and

(q) Permitted Ratio Debt.

"Permitted Investments" means each of the following:

(a) Cash Equivalents;

(b) Investments existing on the Effective Date set forth on Schedule 7.02 and any extension or renewal thereof, but not any increase in the amount thereof;

(c) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding as of the Effective Date, (ii) additional Investments (including capital contributions) by any Loan Party and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Wholly-Owned Subsidiaries that are not Loan Parties in an aggregate outstanding amount invested after the Effective Date not to exceed $30,000,000 at any time; provided that to the extent such Investment includes Intellectual Property material and necessary for the operation of the assets of the Loan Parties and their Subsidiaries, taken as a whole, which constitute ABL Priority Collateral, such Intellectual Property shall be subject to a non-exclusive royalty-free worldwide license in favor of the Agent for the purpose of the Agent's exercise of rights and remedies under this Agreement in connection with the ABL Priority Collateral;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees constituting Permitted Indebtedness;

(f) Investments by any Loan Party in Swap Contracts permitted hereunder;

(g) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(h) Investments received as the non-cash portion of consideration received in connection with Permitted Dispositions;

(i) advances to officers, directors and employees of the Loan Parties and Restricted Subsidiaries in the ordinary course of business outstanding for ordinary business purposes or notes from officers, directors and employees in exchange for Equity Interests of the Lead Borrower purchased by such officers, directors or employees, in an amount not to exceed, as to all Investments described in this clause (i), $5,000,000 at any time;

(j) Investments constituting Permitted Acquisitions and earnest money deposits made in connection with any letter of intent or purchase agreement entered into in connection with any Permitted Acquisition; provided that Permitted Acquisitions by the Loan Parties in Wholly-Owned Subsidiaries that are not Loan Parties in an aggregate outstanding amount invested after the Effective Date shall not exceed $30,000,000 at any time;

(k) to the extent constituting an Investment, acquisitions of Inventory in the ordinary course of business;

(l) bank deposits in the ordinary course of business, subject to the provisions of Section 6.12;

(m) Investments consisting of extensions of credit by any Subsidiary of a Borrower that is not a Loan Party to any Loan Party; provided that (i) each Loan Party and its Subsidiaries shall accurately record all intercompany transactions on its books and records, and (ii) such intercompany loans shall be subordinated to the Obligations as evidenced by a subordination agreement in form and substance reasonably satisfactory to the Agent and shall otherwise be on terms reasonably satisfactory to the Agent; and

(n) so long as the Payment Conditions are satisfied and without increasing the amounts permitted under any other clause of this definition, additional Investments not otherwise specifically described herein. provided, however, that notwithstanding the foregoing, (i) after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) and (n) shall be permitted to be made unless either (A) no Loans or, if then required to be Cash Collateralized, Letters of Credit are then outstanding, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a LIBOR Rate Loan, the proceeds of which Investment will be applied to the Obligations after the expiration of such Interest Period, and (ii) such Investments shall be pledged to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

“Permitted Overadvance” means an Overadvance made by the Agent, in its discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or

(b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;

(c) is made to pay any other amount chargeable to any Loan Party hereunder or under any other Loan Document; and

(d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Borrowing Base at any time, or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree. provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, (i) the Total Outstandings would exceed the Aggregate Commitments (as in effect prior to any termination of the Aggregate Commitments pursuant to Section 2.06 or 8.02 hereof) , or (ii) at any time that there are only two (2) Lenders and a Specified Event of Default exists, any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date) requests the Agent in writing to cease making such Overadvances.

"Permitted Ratio Debt" means Indebtedness of the Borrowers or any Restricted Subsidiary; provided that (a) such Indebtedness does not mature or have any scheduled amortization or payments, repurchases or redemptions of principal (other than customary amortization payments), in each case, prior the Latest Maturity Date (or, in the case of Subordinated Indebtedness, 91 days after the Latest Maturity Date) of the Commitments at the time such Indebtedness is incurred, (b) the Total Net Leverage Ratio after giving *pro forma effect* to the incurrence of such Indebtedness, as of the end of the most recently ended Measurement Period, is no greater than 2.50 to 1.00, (c) such Indebtedness may be secured to the extent such Liens constitute Permitted Encumbrances in accordance with the definition thereof and (d) the aggregate amount of Permitted Ratio Debt incurred by Restricted Subsidiaries of the Borrowers that are not and do not become Guarantors, shall not exceed $30.0 million.

"Permitted Refinancing" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced; provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions, expenses and other transaction costs and by an amount equal to any existing commitments unutilized thereunder), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security,

than the Indebtedness being Refinanced (and if secured, shall be subject to a lien subordination or other intercreditor agreement on terms not less favorable to the Agent than the terms of the lien subordination or other intercreditor agreement, if any, applicable to the Indebtedness being Refinanced), (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

"Permitted Store Closings" means Store closures and related Inventory dispositions which do not exceed (i) in any Fiscal Year of the Lead Borrower and its Subsidiaries, fifteen percent (15%) of the number of the Borrowers' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the Effective Date, thirty percent (30%) of the number of the Borrowers' Stores in existence as of the Effective Date (net of new Store openings).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Plan" means (i) any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiemployer Plan), maintained for employees of the Lead Borrower or any ERISA Affiliate or (ii) any such Plan to which the Lead Borrower or, solely with respect to a Pension Plan or Multiemployer Plan, any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning provided therefor in Section 6.02.

"Pro Forma Availability Condition" shall mean, as of any date of calculation, Pro Forma Excess Availability will be equal to or greater than twelve and one-half percent (12.5%) of the Loan Cap.

"Pro Forma Excess Availability" shall mean, as of any date of calculation, after giving pro forma effect to the transaction then to be consummated or payment to be made, Availability as of the date of such transaction or payment and for each day of the thirty (30) day period immediately preceding such transaction or payment.

"Pro Forma RP Availability Condition" shall mean, as of any date of calculation, Pro Forma Excess Availability will be equal to or greater than fifteen percent (15%) of the Loan Cap.

"Public Lender" has the meaning provided therefor in Section 6.02.

"Public Market" shall exist if (a) a Public Offering has been consummated and (b) any Equity Interests of the Lead Borrower have been distributed by means of an effective registration statement under the Securities Act of 1933.

"Public Offering" means a public offering of the Equity Interests of the Lead Borrower pursuant to an effective registration statement under the Securities Act of 1933.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Estate" means all real property subject to a Lease and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any Obligation (excluding those on account of Other Liabilities) of any Loan Party hereunder.

"Register" has the meaning provided therefor in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of the Lead Borrower and its Subsidiaries as prescribed by the Securities Laws.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Reports" has the meaning provided therefor in Section 9.12(b).

"Request for Credit Extension" means (a) with respect to a Borrowing, Conversion or continuation of Revolving Loans, a Revolving Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, at least two Lenders holding more than 50% of the Aggregate Commitments or, if the Aggregate Commitments have been terminated, at least two Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Reserves" means all Inventory Reserves and Availability Reserves. The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish new, or modify or eliminate any existing, Reserves upon three (3) Business Days prior notice to the Lead Borrower (during which period the Agent shall be available to discuss any such proposed Reserve with the Lead Borrower); provided that no such prior notice shall be required (i) after the occurrence and during the continuance of an Event of Default or (ii) for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously disclosed and utilized.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"Restricted Subsidiary" means any Subsidiary of any Loan Party which is not an Unrestricted Subsidiary.

"Revolving Borrowing" means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Revolving Loan" means an extension of credit by a Lender to a Borrower pursuant to Section 2.01.

"Revolving Loan Notice" means a notice of (a) a Revolving Borrowing, (b) a Conversion of Revolving Loans from one Type to the other, or (c) a continuation of LIBOR Rate Loans, pursuant to Section 2.02(b), which, if in writing, shall be substantially in the form of Exhibit A.

"Revolving Note" means a promissory note made by the Borrowers in favor of a Lender evidencing Revolving Loans made by such Lender, substantially in the form of Exhibit C-1.

"RP Conditions" means, at the time of determination with respect to the making of any Restricted Payment, that (a) no Specified Event of Default then exists or would arise as a result of the making of such Restricted Payment, (b) immediately after giving pro forma effect to such Restricted Payment, the Pro Forma RP Availability Condition has been satisfied, (c) the

Consolidated Fixed Charge Coverage Ratio for the Measurement Period preceding such Restricted Payment shall be greater than or equal to 1.0 to 1.0, provided that the provisions of this clause (c) shall not be applicable if Availability, calculated in accordance with clause (b) hereof, immediately after giving pro forma effect to such Restricted Payment and for the thirty (30) day period immediately preceding such Restricted Payment is greater than or equal to twenty percent (20%) of the Loan Cap; and (d) the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Responsible Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b) and (c) above, as applicable.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sanction(s)" means any applicable economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the European Union, Her Majesty's Treasury ("HMT") or other sanctions authority with applicable jurisdiction.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"Seasonal Advance Rate Increase Percentage" two and one-half percent (2.5%).

"Seasonal Overadvance Period" shall mean the period in each year commencing September 1 and ending on December 31.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the Security Agreement dated as of the Closing Date among the Loan Parties and the Agent.

"Security Documents" means the Security Agreement, the Blocked Account Agreements, the Credit Card Notifications, any Collateral Access Agreement, any Custom Broker/Carrier Agreement, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Settlement Date" has the meaning provided therefor in Section 2.14(a).

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Lead Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"Solvent" and "Solvency" means, with respect to any Person and its Restricted Subsidiaries on a Consolidated basis on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged, and (f) such Person is not "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code. The amount of all guarantees and other contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Availability" means the sum of (a) Availability and (b) the amount by which the Borrowing Base at such time exceeds the Aggregate Commitments up to an amount not to exceed 2.5% of the Aggregate Commitments.

"Specified Event of Default" means the occurrence of any Event of Default described in any of Sections 8.01(a), 8.01(b) (due to a failure to comply with Section 6.02(c), Section 6.12 or Section 7.15), 8.01(d) (due to any material misrepresentation with respect to a Borrowing Base certification to the extent not corrected within three (3) Business Days following the provision thereof, if capable of cure thereby) or 8.01(f).

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.25).

"Sponsor" means, collectively, Sycamore Partners Management L.L.C. and any of its respective Affiliates and funds or partnerships managed or advised by it (including Sycamore Partners, L.P. and Sycamore Partners A, L.P.), but not including, however, any portfolio company of any of the foregoing.

"Sponsor Management Agreement" means that certain Advisory Agreement, dated as of May 1, 2015 by and between Sycamore Partners Management, L.L.C., TopCo, and the Loan Parties, as amended, modified, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Standby Letter of Credit" means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

"Stated Amount" means at any time the maximum amount for which a Letter of Credit may be honored.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Store" means any retail store (which may include any Real Estate, fixtures, Equipment, Inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms reasonably approved in writing by the Agent, including, without limitation, the Intercompany Subordinated Indebtedness.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligations" means, with respect to any Loan Party, any obligation of such Loan Party to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) reasonably determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Bank of America, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning provided therefor in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Note" means the promissory note of the Borrowers substantially in the form of Exhibit C-2, payable to the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $20,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Swing Line Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Swing Line Sublimit, then the Swing Line Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Commitments.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the earliest to occur of (a) the Maturity Date, (b) the date on which the maturity of the Obligations (excluding Other Liabilities) is accelerated (or deemed accelerated) and the Aggregate Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (c) the termination of the Aggregate Commitments in accordance with the provisions of Section 2.06 hereof.

"Total Assets" means, at any time, the total assets of the Borrowers and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Lead Borrower or such other Person as may be available (as determined in good faith by the Lead Borrower).

"Total Net Leverage Ratio" means, with respect to any Measurement Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Measurement Period to (b) Consolidated EBITDA of the Borrowers and their Restricted Subsidiaries for such Measurement Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Trademark" has the meaning set forth in the Security Agreement.

"Trading with the Enemy Act" has the meaning provided therefor in Section 10.18.

"Transaction Certificate" means a certificate substantially in the form of Exhibit H.

"Transactions" shall mean the amendment and restatement of the Existing Credit Agreement the transactions that occurred on the Effective Date.

"Type" means, with respect to a Revolving Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, or priority of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection, or priority, or availability of such remedy, as the case may be.

"UCP 600" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"UFCA" has the meaning provided therefor in Section 10.21(d).

"UFTA" has the meaning provided therefor in Section 10.21(d).

"Unintentional Overadvance" means an Overadvance which, to the Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base or misrepresentation by the Loan Parties.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning provided therefor in Section 2.03(c)(i).

"Unrestricted Subsidiary" means a Subsidiary of a Loan Party designated by Holdings' board of directors as such in accordance with Section 6.18.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning provided therefor in Section 3.01(e)(ii)(B)(III).

"Wells Fargo" means Wells Fargo Bank, National Association.

"Wholly-Owned Subsidiary" means, with respect to any Person, any corporation, partnership or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors' qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such

Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders, and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (i) the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts), providing Cash Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (x) unasserted contingent indemnification Obligations, (y) any Obligations relating to Bank Products (including Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized, and (y) any Obligations relating to Cash Management Services that, at such time, are allowed by the applicable provider of such Cash Management Services to remain outstanding without being required to be repaid, and (ii) the termination of the Aggregate Commitments and the obligation of the L/C Issuer to issue Letters of Credit hereunder.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements and related materials described in Sections 6.01(a), except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original

intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing and 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, in a manner such that any obligations relating to a lease that, in accordance with GAAP as in effect on the Effective Date, would be accounted for by the Borrowers as an operating lease shall be accounted for as obligations relating to an operating lease and not as Capitalized Lease Obligations (and shall not constitute Indebtedness hereunder).

1.04 Rounding. Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

1.07 Certifications. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base;

provided that:

(a) after giving effect to any Revolving Borrowing, (x) the Total Outstandings shall not exceed the Loan Cap, and (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment; and

(b) the Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of each Lender's Commitments, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01.

2.02 Borrowings, Conversions and Continuations of Revolving Loans.

(a) Revolving Loans (other than Swing Line Loans) shall be either Base Rate Loans or LIBOR Rate Loans as the Lead Borrower may request subject to and in accordance with this Section 2.02. All Swing Line Loans shall be only Base Rate Loans. Subject to the other provisions of this Section 2.02, Revolving Borrowings of more than one Type may be incurred at the same time.

(b) Each Revolving Borrowing, each Conversion of Revolving Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Lead Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 1:00 p.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, Conversion to or continuation of LIBOR Rate Loans or of any Conversion of LIBOR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Agent of a written Revolving Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each Borrowing of, Conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or Conversion to Base Rate Loans shall be in such minimum amounts as the Agent may require. Each Revolving Loan Notice (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a Revolving Borrowing, a Conversion of Revolving Loans from one Type to the other, or a continuation of LIBOR Rate Loans, (ii) the requested date of the Borrowing, Conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, Converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be Converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify a Type of Revolving Loan in a Revolving Loan Notice or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation of a LIBOR Rate Loan, then the applicable Revolving Loans shall be made as, or Converted to, Base Rate Loans. Any such automatic Conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loans. If the Lead Borrower requests a Borrowing of, Conversion to, or continuation of LIBOR Rate Loans in any such Revolving Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be Converted to a LIBOR Rate Loan.

(c) Following receipt of a Revolving Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Revolving Loans, and if no timely notice of a Conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic Conversion of LIBOR Rate Loans to Base Rate Loans described in Section 2.02(b). In the case of a Revolving Borrowing, each Lender shall make the amount of its Revolving Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Revolving Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by (i) crediting the account of the Lead Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower; provided, however, that if, on the date the Revolving Loan Notice with respect to such Borrowing is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(d) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Revolving Loans which are Base Rate Loans.

(e) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or Converted only on the last day of an Interest Period for such LIBOR Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, Converted to or continued as LIBOR Rate Loans without the Consent of the Required Lenders.

(f) The Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Revolving Borrowings, all Conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than five (5) Interest Periods in effect with respect to LIBOR Rate Loans.

(h) The Agent, the Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders, the Swing Line Lender and the L/C Issuer and the Borrowers, the Swing Line Lender, and each Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Revolving Loan bearing interest at the Base Rate and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvances.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Loan Parties (including on behalf of any Restricted Subsidiary, Affiliate or holding company thereof; provided that if such Affiliate or holding company is not a Loan Party, a Loan Party shall be a co-applicant thereto), and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Loan Parties (including on behalf of any Restricted Subsidiary thereof) and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Loan Cap, (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Agent has approved such expiry date; or

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Commercial Letter of Credit would occur more than 180 days after the date of issuance, unless the Agent has approved such expiry date; or

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree) or the Agent has approved such expiry date; or

(D) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it; or

(E) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally; or

(F) except as otherwise agreed by the Agent, such Letter of Credit is to be denominated in a currency other than Dollars; provided that if the L/C Issuer, with the consent of the Agent, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in the currency in which such Letter of Credit was denominated; or

(G) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(H) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either (i) the Letter of Credit then proposed to be issued, or (ii) such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Lead Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least two (2) Business Days (or such other date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Lead Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Subject to the provisions of Section 2.02(b)(v) hereof, promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied or unless the L/C Issuer would not be permitted, or would have no obligation, at such time to issue such Letter of Credit under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Loan Party or enter

into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance or amendment of each Letter of Credit, each Lender shall be deemed to (without any further action), and hereby irrevocably and unconditionally severally agrees to, purchase from the L/C Issuer, without recourse or warranty, a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the Stated Amount of such Letter of Credit. Upon any change in the Commitments under this Agreement, it is hereby agreed that with respect to all L/C Obligations, there shall be an automatic adjustment to the participations hereby created to reflect the new Applicable Percentages of the assigning and assignee Lenders.

(iii) If the Lead Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Standby Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Lead Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Standby Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Standby Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Any L/C Issuer (other than Bank of America or any of its Affiliates) shall notify the Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such L/C Issuer, provided that (A) until the Agent advises any such Issuing Bank that the provisions of Section 4.02 are not satisfied, or (B) the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and the L/C Issuer, such L/C Issuer shall be required to so notify the Agent in writing only once each week of the Letters of Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Agent and such L/C Issuer may agree. The L/C Issuer will also deliver (contemporaneously with the notification set forth in the first sentence hereof) to the Lead Borrower and the Agent a true and complete copy of each such Letter of Credit or amendment.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Lead Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Agent thereof. Not later than 11:00 a.m. on the first Business Day immediately following the date that the Lead Borrower receives notice from the L/C Issuer of a drawing under a Letter of Credit (each such date, an "Honor Date"), the applicable Borrower shall be deemed to have requested a Borrowing of Revolving Loans that are Base Rate Loans to be disbursed on the such Business Day in an amount equal to the amount of such payment by the L/C Issuer under the Letter of Credit without regard to the minimum and multiples specified in Section 2.02(b) for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02 (other than the delivery of a Revolving Loan Notice). In the event that such a Borrowing cannot be made pursuant to the terms hereof, then not later than 11:00 a.m. on the first Business Day after the Honor Date, the applicable Borrower shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice from the Agent pursuant to Section 2.03(c)(i) make funds available to the Agent (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Loan that is a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason and the Borrowers have failed to reimburse the L/C Issuer pursuant to clause (c)(i) above, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced or reimbursed, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate for Revolving Loans which are Base Rate Loans. In such event, each Lender's payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Revolving Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender its L/C Advance in respect of such payment in accordance with Section 2.03(c), if the L/C Issuer, or the Agent for the account of the L/C Issuer, receives any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Agent pursuant to Section 2.03(g)), the L/C Issuer shall distribute any payment it receives to the Agent and the Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Agent.

(ii) If any payment received by the L/C Issuer or by Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the L/C Issuer in connection with the foregoing. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Restricted Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Restricted Subsidiaries; or

(ix) the fact that any Default or Event of Default shall have occurred and be continuing.

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will immediately notify the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid. Notwithstanding the foregoing, the Borrowers shall not be precluded from asserting any claim for damages suffered by the Borrowers to the extent caused by the gross negligence, bad faith or willful misconduct of the L/C Issuer, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Loan Party or to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Required Lenders; (ii) any action taken or omitted in the absence of gross negligence, bad faith, or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit or any error in interpretation of technical terms; (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document; or (v) for any action, neglect or omission under or in connection with any Letter of Credit or Issuer Document, including, without limitation, the issuance or amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, or the honoring or dishonoring of any demand under any Letter of Credit, and such action or neglect or omission will be binding upon the Loan Parties and the Lenders; provided that the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to punitive, consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct, bad faith, or gross negligence, as determined by a final and non-appealable judgment of a court of competent jurisdiction. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be

liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct, bad faith, or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined by a final and non-appealable judgment of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or the L/C Issuer may refuse to accept and may refuse to make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit and may disregard any requirement in a Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer shall not be responsible for the wording of any Letter of Credit (including, without limitation, any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent, unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance the L/C Issuer may provide to the Borrowers with drafting or recommending text for any Letter of Credit Application or with the structuring of any transaction related to any Letter of Credit, and each Borrower hereby acknowledges and agrees that any such assistance will not constitute legal or other advice by the L/C Issuer or any representation or warranty by the L/C Issuer that any such wording or such Letter of Credit will be effective. Without limiting the foregoing, the L/C Issuer may, as it deems reasonably appropriate, modify or alter and use in any Letter of Credit the terminology contained on the Letter of Credit Application for such Letter of Credit. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Cash Collateral. Upon the request of the Agent, if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 103% of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer (which documents are hereby Consented to by the Lenders). Sections 2.05, 2.06(b) and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. The Borrowers hereby grant to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing to secure all Obligations. Such cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Agent determines that any funds held as cash collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than 103% of the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as cash collateral, an amount equal to

the excess of (x) 103% of the aggregate Outstanding Amount of L/C Obligations over (y) the total amount of funds, if any, then held as cash collateral that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as cash collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations in the manner specified in Section 8.03.

(h) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Lead Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit) (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the UCP shall apply to each Commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade—International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate multiplied by the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be due and payable quarterly in arrears on the first Business Day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, at the request of the Agent or the Required Lenders, all Letter of Credit Fees shall accrue at the Default Rate as provided in Section 2.08(b) hereof.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to 0.125% per annum, computed on the daily amount available to be drawn under such Letter of Credit and on a quarterly basis in arrears. Such fronting fees shall be due and payable on the first Business Day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Loan Party (or on behalf of a Restricted Subsidiary), the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Loan Parties (or on behalf of Restricted Subsidiaries) inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender shall, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the Loan Cap, and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Commitment and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and provided further that the Swing Line Lender shall not be obligated to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at the Base Rate plus the Applicable Margin for Base Rate Loans. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage *multiplied by* the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term "Agent" as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the provisos to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will use its commercially reasonable efforts to make the amount of its Swing Line Loan available to the Borrowers by not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice either by (i) crediting the account of the Lead Borrower on the books of Bank of America with the amount of such funds or (ii) wire transferring such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Swing Line Lender by the Lead Borrower; provided, however, that if, on the date of the proposed Swing Line Loan, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Refinancing of Swing Line Loans.

(i) In addition to settlements required under Section 2.14 hereof, the Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Lender make a Revolving Loan which is a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Lead Borrower with a copy of the applicable Revolving Loan Notice promptly after delivering such notice to the Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Revolving Loan Notice available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified in such Revolving Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan which is a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Revolving Loans which are Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute such payment to the Agent and the Agent shall distribute to each such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until a Lender funds its Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Revolving Loans, in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of LIBOR Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Loan Cap, as then in effect, the Borrowers shall immediately prepay the Loans and L/C Borrowings and Cash Collateralize the L/C Obligations (other than L/C Borrowings) in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations (other than L/C Borrowings) pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Loan Cap, as then in effect.

(d) (i) Upon the occurrence of a Cash Dominion Event, the Borrowers shall prepay the Loans as and to the extent required by the provisions of Section 6.12 hereof, and (ii) after the occurrence and during the continuance of an Event of Default or as and to the extent required by the provisions of Section 2.06(b), the Borrowers shall Cash Collateralize the L/C Obligations.

(e) [Reserved].

(f) Prepayments made pursuant to Section 2.05(c), (d), and (e) above and funds on deposit in the Collection Account required to be applied to the Obligations pursuant to Section 6.12(d)(iii), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Loans, third, after the occurrence and during the continuance of an Event of Default, shall be used to Cash Collateralize the remaining L/C Obligations; fourth, shall be applied ratably to Other Liabilities then due and payable; and fifth, the amount remaining, if any, after the prepayment in full of all L/C Borrowings and Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations (to the extent required hereunder) in full shall be deposited by the Agent in a deposit account of the Lead Borrower and may be utilized by the Borrowers in the ordinary course of its business to the extent otherwise permitted hereunder. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable, and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(g) Each prepayment of the Revolving Loans shall not reduce or terminate the Aggregate Commitments.

2.06 Termination or Reduction of Commitments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the

Total Outstandings would exceed the Aggregate Commitments. If, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess. To the extent there are any FILO Tranches outstanding at the time of any such reduction or termination of the Aggregate Commitments under this Section 2.06, such reduction or termination shall be applied first to the non-FILO Tranche of Revolving Loans on a pro-rata basis unless the Borrowers shall be in pro forma compliance with the Payment Conditions, in which case such reduction or termination may be applied to such FILO Tranche(s).

(b) The Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, or the Aggregate Commitments under this Section 2.06. Upon any reduction of the Aggregate Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. If, as a result of such termination or reduction, (i) the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, the Borrowers shall contemporaneously with such reduction or termination, Cash Collateralize such excess amount, (ii) the Swing Line Loans hereunder would exceed the Swing Line Sublimit, the Borrowers shall contemporaneously with such reduction or termination, pay the Agent an amount equal to such excess, and (iii) the Revolving Loans or the Swing Line Loans hereunder would exceed the Aggregate Commitments or the Swing Line Sublimit, as applicable, the Borrowers shall contemporaneously with such reduction or termination, pay the Agent an amount equal to such excess. Such reductions shall be applied pro rata to the Aggregate Commitments; provided that, if a FILO Tranche is outstanding, such reductions may be applied first to such FILO Tranche so long as the Borrowers shall be in pro forma compliance with the Payment Conditions.

2.07 Repayment of Obligations.

Except as provided in Section 10.11 with respect to the collateralization of the Other Liabilities, the Borrowers shall repay to the Lenders on the Termination Date all Obligations outstanding on such date (other than contingent indemnification claims for which a claim has not been asserted) and shall cause each Letter of Credit to be returned to the L/C Issuer undrawn or shall Cash Collateralize all L/C Obligations (to the extent not previously Cash Collateralized as required herein).

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBOR Rate for such Interest Period plus the Applicable Margin for LIBOR Rate Loans; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans.

(b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(ii) If any other Event of Default has occurred and is continuing, then the Agent, (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, at the request of any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, at the request of the Required Lenders, shall notify the Lead Borrower that all outstanding Obligations (excluding Other Liabilities) shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest to the fullest extent permitted by Law) shall be due and payable upon demand.

(c) Except as provided in Section 2.08(b)(iii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(i) Commitment Fee. The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Commitment Fee Percentage *multiplied by* the actual daily amount by which the Commitments exceed the sum of the Outstanding Amount of Revolving Loans and L/C Obligations (subject to adjustment as provided in Section 2.16) during the immediately preceding quarter. The commitment fee described in the immediately preceding sentence (the "Commitment Fee") shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day of each January, April, July and October, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. It is hereby understood and agreed that Swing Line Loans shall not be considered utilization of the Commitment for purposes of the calculation of the commitment fees payable hereunder.

(ii) Other Fees. The Borrowers shall pay the fees specified in the Fee Letter to the Persons, in the amounts, and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day

on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Revolving Loans or Swing Line Loans (in the case of the Swing Line Lender), as applicable, in addition to such accounts or records. Each Lender may, but shall not be obligated to, attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit and indemnity of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Except for principal payments to be made on the Settlement Date (as provided in Section 2.14), the Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such

Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day (other than with respect to payment of a LIBOR Loan), and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to (A) the proposed date of any Borrowing of LIBOR Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing), or (B) the date that such Lender's participation in a Letter of Credit or Swing Line Loan is required to be funded, that such Lender will not make available to the Agent such Lender's share of such Borrowing or participation, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02), Section 2.03 or Section 2.04, as applicable, and may, in reliance upon such assumption, make available to the Borrowers, the L/C Issuer or the Swing Line Lender, as applicable, a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Revolving Borrowing or participation available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Revolving Borrowing or participation to the Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Revolving Borrowing or participation in such Letter of Credit or Swing Line Loan. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of any of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment hereunder.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Credit Parties. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Credit Party's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or sub-participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or sub-participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment on account of the Other Liabilities prior to the occurrence of an Event of

Default, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or sub-participations in L/C Obligations or Swing Line Loans to any Eligible Assignee or Participant, other than to the Loan Parties or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders.

(a) The amount of each Lender's Applicable Percentage of outstanding Loans (including, for clarity, outstanding Swing Line Loans), shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Loans and repayments of Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Loans (including, for clarity, outstanding Swing Line Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, each Lender (other than the Swing Line Lender) shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender (including, for clarity, the Swing Line Lender), such amounts as are necessary to insure that, after giving effect to all such transfers, the Outstanding Amount of Swing Line Loans is zero and the amount of Revolving Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Increase in Commitments.

(a) Request for Increase. Provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Lenders), the Lead Borrower may from time to time, request an increase in the Aggregate Commitments (or, solely to the extent set forth in Section 2.15(f) below, provide commitments under a new facility constituting a FILO Tranche) by an amount (for all such requests) not exceeding (x) $30,000,000 plus (y) an amount equal to the aggregate principal amount of all permanent commitment

reductions of the Aggregate Commitments; provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000 (or such lesser amount as to which the Agent may agree in writing), and (ii) the Lead Borrower may make a maximum of three (3) such requests. At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the Persons to whom such requested increase is to be made (and if to any then existing Lender, such request shall be made pro rata to all existing Lenders) and the time period within which each such Person is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to such Persons). Any Person so designated by the Lead Borrower which is not then a Lender shall be subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld, delayed or conditioned).

(b) Elections to Increase. Each Person to whom a request for an increase is made pursuant to clause (a), above, shall notify the Agent within such time period whether or not it agrees to furnish, or as to then existing Lenders increase, its Commitment and, if so, the amount of its Commitment it is willing to furnish or increase. Any Person not responding within such time period shall be deemed to have declined to furnish, or as to then existing Lenders, increase, its Commitment.

(c) Notification by Agent; Additional Commitment Lenders. The Agent shall notify the Lead Borrower of each Person's responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld, delayed or conditioned), to the extent that the Persons so designated by the Lead Borrower pursuant to clause (a) hereof decline to establish, or with respect to then existing Lenders to increase their Commitments, or decline to increase their Commitments to the amount requested by the Lead Borrower, Bank of America will use its reasonable efforts to arrange for other Eligible Assignees to become a Lender hereunder and to issue commitments in an amount equal to the amount of the increase in the Aggregate Commitments requested by the Lead Borrower and not accepted by the Persons so designated (and the Lead Borrower may also invite additional Eligible Assignees to become Lenders), *provided, however,* that without the consent of the Agent, at no time shall the Commitment of any Additional Commitment Lender be less than $5,000,000.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Agent, in consultation with the Lead Borrower, shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Agent shall promptly notify the Lead Borrower and the new (if any) and existing Lenders of the final allocation of such increase and the Increase Effective Date and on the Increase Effective Date (i) the Aggregate Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment increases, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Commitments and Applicable Percentages of the new and existing Lenders.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase,

(1) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties (x) specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date or (y) are qualified by materiality in the text thereof, in which case they are true and correct in all respects, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) no Default or Event of Default exists or would arise therefrom, (ii) the Borrowers, the Agent, and any Additional Commitment Lender shall have executed and delivered a joinder to the Loan Documents in such form as the Agent shall reasonably require; (iii) the Borrowers shall have paid such fees and other compensation to the Additional Commitment Lenders as the Lead Borrower and such Additional Commitment Lenders shall reasonably agree; (iv) the Borrowers shall have paid such arrangement fees to Bank of America as the Lead Borrower and the Agent may reasonably agree; (v) if reasonably requested by the Agent, the Borrowers shall deliver an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; (vi) the Borrowers and the Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested; and (vii) no Default or Event of Default exists. The Borrowers shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Percentages arising from any non-ratable increase in the Commitments under this Section.

(f) FILO Tranche. An increase under this Section 2.15 may be in the form of a separate "first-in, last-out" or "last-out" tranche (the "FILO Tranche") with interest rate margins, rate floors, upfront fees, funding discounts and original issue discounts, in each case to be agreed upon (which, for the avoidance of doubt, shall not require any adjustment to the Applicable Rate of other Revolving Loans) among the applicable Borrower and the Lenders providing the FILO Tranche so long as (a) any Loans and related Obligations in respect of the FILO Tranche are not to be guaranteed by any Person other than the Guarantors and are not secured by any assets other than Collateral, (b) as between (x) the Revolving Loans (other than the FILO Tranche) and (y) the FILO Tranche, all proceeds from the liquidation or other realization of the Collateral or application of funds in accordance with Section 8.03 shall be applied, first to obligations owing under, or with respect to, the Revolving Loans (other than the FILO Tranche) and second to the FILO Tranche; (c) the Borrowers may not prepay Loans under the FILO Tranche or terminate or reduce the commitments in respect thereof at any time that other Loans (including Swing Line Loans) and/or Unreimbursed Amounts (unless cash collateralized or otherwise provided for in a manner reasonably satisfactory to the Agent) are outstanding; (d) any prepayment of the FILO Tranche pursuant to Section 2.05 shall be subject to satisfaction of the Payment Conditions on a *pro forma basis;* (e) the Required Lenders (calculated as including the FILO Tranche) shall, control exercise of remedies in respect of the Collateral; (f) no changes affecting the priority status of this facility (other than the FILO Tranche) vis-à-vis the FILO Tranche may be made without the consent of the Required Lenders under this facility, other than such changes which affect only the FILO Tranche; (g) the final maturity of any FILO Tranche shall not occur, and no FILO Tranche shall require mandatory commitment reductions prior to, the Latest Maturity Date at such time; and (h) except as otherwise set forth in this Section 2.15(f), the terms of any FILO Tranche are not

materially less favorable to the Borrowers than those hereunder (including, without limitation, the inclusion of any additional financial or other material covenant without the consent of the Agent); *provided however*, that advance rates with respect to the items included in the borrowing base for such FILO Tranche shall not exceed 100% of the Appraised Value of Eligible Inventory and 100% of the Appraised Value of Eligible In-Transit Inventory and 100% of Eligible Credit Card Receivables.

(g) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender; fourth, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement (including, without limitation, future Fronting Exposure with respect to such Defaulting Lender with respect to Swing Line Loans) and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and such Loans were

made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(i) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees owing to such Defaulting Lender for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.03(g).

(C) With respect to any fee payable under Section 2.09(i) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Outstanding Amount of Obligations (excluding Other Liabilities) of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.03(g).

(b) Defaulting Lender Cure. If the Lead Borrower and the Agent (and, if the applicable Lender is a Lender, the Swing Line Lender and the L/C Issuer) agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.17 Extension of Maturity Date.

(a) Extension of Commitments. The Borrowers may at any time and from time to time request that all or a portion of the Commitments (each, an "Existing Revolver Tranche") be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Commitments (any such Commitments which have been so amended, "Extended Commitments") and to provide for other terms consistent with this Section 2.17; provided that there shall be no more than three (3) tranches of Loans and Commitments outstanding at any time. In order to establish any Extended Commitments, the Lead Borrower shall provide a notice to the Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, an "Extension Request") setting forth the proposed terms (which shall be determined in consultation with the Agent) of the Extended Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Commitments under the Existing Revolver Tranche from which such Extended Commitments are to be amended, except that: (i) the Maturity Date of the Extended Commitments shall be later than the Maturity Date of the Commitments of such Existing Revolver Tranche, (ii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Commitments); and (iii) all borrowings under the Commitments and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Commitments (and related outstandings) and (II) repayments required upon the termination date of the non-extending Commitments); provided further, that (A) the conditions

precedent to a Borrowing set forth in Section 4.02 shall be satisfied as of the date of such Extension Amendment and at the time when any Loans are made in respect of any Extended Commitment, (B) in no event shall the final maturity date of any Extended Commitments of a given Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Commitments hereunder, and (C) all documentation in respect of the such Extension Amendment shall be consistent with the foregoing. Any Extended Commitments amended pursuant to any Extension Request shall be designated a series (each, an "Extension Series") of Extended Commitments for all purposes of this Agreement; provided that any Extended Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Revolver Tranche. Each Extension Series of Extended Commitments incurred under this Section 2.17 shall be in an aggregate principal amount reasonably acceptable to the Agent.

(b) Extension Request. The Lead Borrower shall provide the applicable Extension Request at least sixty (60) Business Days (or such shorter period as may be agreed by the Agent) prior to the date on which Lenders under the Existing Revolver Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Agent, in each case acting reasonably, to accomplish the purposes of this Section 2.17. No Lender shall have any obligation to agree to provide any Extended Commitment pursuant to any Extension Request. Any Lender (each, an "Extending Lender") wishing to have all or a portion of its Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Commitments shall notify the Agent (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Commitments under the Existing Revolver Tranche which it has elected to request be amended into Extended Commitments (subject to any minimum denomination requirements imposed by the Agent). In the event that the aggregate principal amount of Commitments under the Existing Revolver Tranche in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Commitments requested to be extended pursuant to the Extension Request, Commitments subject to Extension Elections shall be amended to reflect allocations of the Extended Commitments, which Extended Commitments shall be allocated as agreed by the Agent and the Lead Borrower.

(c) New Revolving Commitment Lenders. Following any Extension Request made by the Borrowers in accordance with Sections 2.17(a) and 2.17(b), if the Lenders shall have declined to agree during the period specified in Section 2.17(b) above to provide Extended Commitments in an aggregate principal amount equal to the amount requested by the Borrowers in such Extension Request, the Borrowers may request that Additional Commitment Lenders provide an Extended Commitment hereunder (an "Additional Commitment"); provided that such Extended Commitments of such Additional Commitment Lenders (i) shall be in an aggregate principal amount for all such Additional Commitment Lenders not to exceed the aggregate principal amount of Extended Commitments so declined to be provided by the existing Lenders and (ii) shall be on identical terms to the terms applicable to the terms specified in the applicable Extension Request (and any Extended Commitments provided by existing Lenders in respect thereof); provided further that, as a condition to the effectiveness of any Extended Commitment of any Additional Commitment Lender, the Agent, the L/C Issuer and the Swing Line Lender shall have consented (such consent not to be unreasonably withheld) to each Additional Commitment

Lender if such consent would be required under Section 10.06(b) for an assignment of Commitments to such Person. Notwithstanding anything herein to the contrary, any Extended Commitment provided by Additional Commitment Lenders shall be pro rata to each Additional Commitment Lender. Upon effectiveness of the Extension Amendment to which each such Additional Commitment Lender is a party, (a) the Commitments of all existing Lenders of each Type specified in the Extension Amendment in accordance with this Section 2.17 will be permanently reduced pro rata by an aggregate amount equal to the aggregate principal amount of the Extended Commitments of such Additional Commitment Lenders and (b) the Commitment of each such Additional Commitment Lender will become effective. The Extended Commitments of Additional Commitment Lenders will be incorporated as Commitments hereunder in the same manner in which Extended Commitments of existing Lenders are incorporated hereunder pursuant to this Section 2.17, and for the avoidance of doubt, all Borrowings and repayments of Loans from and after the effectiveness of such Extension Amendment shall be made pro rata across all Types of Commitments including such Additional Commitment Lenders (based on the outstanding principal amounts of the respective Types of Commitments) except for (x) payments of interest and fees at different rates for each Type of Commitments and (y) repayments required on the Maturity Date for any particular Type of Commitments. Upon the effectiveness of each Additional Commitment pursuant to this Section 2.17(c), (a) each Lender of all applicable existing Types of Commitments immediately prior to such effectiveness will automatically and without further act be deemed to have assigned to each Additional Commitment Lender, and each such Additional Commitment Lender will automatically and without further act be deemed to have assumed, a portion of such Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Line Loans held by each Lender of each Type of Commitments (including each such Additional Commitment Lender) will equal the percentage of the aggregate Commitments of all Types of Lenders represented by such Lender's Commitment and (b) if, on the date of such effectiveness, there are any Loans outstanding, such Loans shall on or prior to the effectiveness of such Additional Commitment be prepaid from the proceeds of Loans outstanding after giving effect to such Additional Commitments, which prepayment shall be accompanied by accrued interest on the Loans being prepaid and any costs incurred by any Lender in accordance with Section 3.04. The Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(d) Extension Amendment. Extended Commitments and Additional Commitments shall be established pursuant to an amendment (each, an "Extension Amendment") to this Agreement among the Borrowers, the Agent and each Extending Lender and each Additional Commitment Lender, if any, providing an Extended Commitment or an Additional Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.17(a), (b) and (c) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Agent, receipt by the Agent of (i) legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a Change in Law, change in fact or change to counsel's form of opinion reasonably

satisfactory to the Agent and (ii) reaffirmation agreements and/or such amendments to the Security Documents as may be reasonably requested by the Agent in order to ensure that the Extended Commitments or the Additional Commitments, as the case may be, are provided with the benefit of the applicable Loan Documents. The Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Commitments or the Additional Commitments, as the case may be, incurred pursuant thereto, (ii) make such other changes to this Agreement and the other Loan Documents (without the consent of the Required Lenders) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agent and the applicable Borrower, to effect the provisions of this Section, and the Required Lenders hereby expressly authorize the Agent to enter into any such Extension Amendment.

(e) Treatment as Payment of Loans. No conversion of Loans pursuant to any Extension in accordance with this Section 2.17 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(f) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be

increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction on account of Indemnified Taxes been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Lead Borrower or the Agent, as the case may be, after any payment of Taxes by the Lead Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent, at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Lead Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms), establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI (or any successor forms);

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or any successor forms), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Lead Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) 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 Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the 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 Lead Borrower or the Agent as may be necessary for the Lead Borrower and the 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. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Agent in writing of its legal inability to do so.

(f) Mitigation. If any Recipient claims any additional amounts payable pursuant to this Section 3.01, then such Recipient shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrowers) if, in the judgment of such Recipient, such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Recipient, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Recipient. The Borrowers agree to pay all reasonable costs and expenses incurred by any Recipient in connection with any such efforts or measures.

(g) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(h) FATCA. For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of this Agreement, the Borrowers and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(i) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Rate Loans, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Agent, (i) any

obligation of such Lender to make or continue LIBOR Rate Loans or to Convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate, in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, Convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or Conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or Converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBOR Rate Loan or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan, or (c) the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have Converted such request into a request for a Revolving Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on LIBOR Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any LIBOR Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder , other than an increase related to Taxes, which are governed exclusively by Section 3.01 hereof (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer and delivery of the certificate contemplated by Section 3.04(c), the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then upon delivery of the certificate contemplated by Section 3.04(c), from time to time the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section certifying that such Lender is seeking corresponding compensation from other similarly situated borrowers and delivered to the Lead Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, Conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or Convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13; including any actual loss (as opposed to incidental, consequential, indirect or similar losses) of anticipated profits and any loss or reasonable expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary and reasonable administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Lead Borrower.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender or the L/C Issuer requests compensation under Section 3.04, or the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender, the L/C Issuer, any Participant or any Governmental Authority for the account of any Lender the L/C Issuer or any such Participant pursuant to Section 3.01, or if any Lender, the L/C Issuer or any such Participant gives a notice pursuant to Section 3.02, then such Lender, the L/C Issuer or any such Participant shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith

judgment of such Lender, the L/C Issuer or Participant such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender, L/C Issuer or Participant to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, L/C Issuer or Participant. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender, L/C Issuer or Participant in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

3.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Credit Extensions so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes, guarantees and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit Extension. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Effective Date. The effectiveness of this Agreement on the Effective Date is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance reasonably satisfactory to the Agent:

(i) counterparts of this Agreement each properly executed by a Responsible Officer of the signing Loan Party and the Lenders sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) a Note (which may, with respect to Lenders party to the Existing Credit Agreement, take the form of an amended and restated Note), executed by the Borrowers in favor of each Lender requesting a Note (to the extent any such Note or Notes were requested on or before the Effective Date);

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing, and qualified to engage in business in the jurisdiction of its formation, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request (which shall include, among other things, authority, legality, validity, binding effect and enforceability of the Loan Documents, non-contravention and creation and perfection of the Liens on the Collateral in favor of the Agent);

(vi) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.01 and 4.02 have been satisfied, (B) that since January 28, 2017, there has not occurred a Material Adverse Effect, and (C) as to the Solvency of the Loan Parties;

(vii) to the extent not previously delivered in connection with the Existing Credit Agreement, (A) the Security Documents, each duly executed by the applicable Loan Parties, and (B) evidence that certificates evidencing any stock or instruments being pledged under the Security Documents, together with undated stock powers or other documents of transfer executed in blank, have been delivered to the Agent;

(viii) all other Loan Documents, each duly executed by the applicable Loan Parties;

(ix) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, reasonably satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements reasonably satisfactory to the Agent for the delivery of such termination statements, releases, satisfactions and discharges have been made; and

(x) to the extent not previously filed, registered or recorded in connection with the Existing Credit Agreement, all Uniform Commercial Code financing statements and short-form grants of security interest in Intellectual Property, required by Law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the Liens intended to be created under the Loan Documents having the priority intended thereby and all such documents and instruments shall have been so filed, registered or recorded (or arrangements for the same made) to the reasonable satisfaction of the Agent.

(b) On the Effective Date, Availability shall be not less than $40,000,000

(c) The Agent shall have received a Borrowing Base Certificate dated the Effective Date, relating to the month ended on September 30, 2017, and executed by a Responsible Officer of the Lead Borrower.

(d) Since January 28, 2017, there shall not have occurred a "Material Adverse Effect".

(e) All fees required to be paid to the Agent or MLPFS on or before the Effective Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Effective Date shall have been paid in full.

(f) The Borrowers shall have paid all reasonable, documented and accrued fees, charges and disbursements of counsel to the Agent to the extent owing and invoiced at least one Business Day prior to the Effective Date.

(g) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" rules and regulations, including without limitation the Patriot Act, in each case, to the extent requested at least three (3) Business Days prior to the Effective Date (or such shorter period as the Agent may agree in writing).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Revolving Loan Notice requesting only a Conversion of Revolving Loans to the other Type, or a continuation of LIBOR Rate Loans) and of each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects, and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) After giving effect to the Credit Extension requested to be made on any such date and the use of proceeds thereof, Availability shall be greater than zero.

Each Request for Credit Extension (other than a Revolving Loan Notice requesting only a Conversion of Revolving Loans to the other Type or a continuation of LIBOR Rate Loans) submitted by the Lead Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in this Section 4.02 have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, the Required Lenders, otherwise direct the Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and L/C Advances and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which are agreed to by the Agent, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Restricted Subsidiary thereof (a) is duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has (i) all requisite corporate or organizational power and authority and (ii) all requisite governmental licenses, permits, authorizations, consents and approvals to (in the case of clauses (i) and (ii)) (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (b)(ii) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Effective Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number, if any.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under (i) any Material Contract in excess of $25,000,000 or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Restricted Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, except, in each case referred to in this clause (b), to the extent that any such conflict, breach, termination, contravention, default or payment could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which such Loan Party is a party, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the priority of such Liens contemplated thereby), (b) such as have been obtained or made and are in full force and effect or (c) those the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The financial statements described in Section 6.01(a) and delivered (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The financial statements described in Section 6.01(b) and delivered (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal yearend audit adjustments and purchase accounting adjustments.

(c) Since January 28, 2017, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Consolidated forecasted balance sheet and statements of income and cash flows of the Lead Borrower and its Subsidiaries heretofore or hereafter delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation, provided, that such statements would be subject to normal quarterly and year-end adjustments and the absence of footnotes (it being understood that such forecasted financial information are not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, that no assurance is given that any particular forecasts will be realized, that actual results may differ and that such differences may be material).

5.06 Litigation. Except as specifically disclosed in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, overtly threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Restricted Subsidiaries or against any of its properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.07 Ownership of Property; Liens; Licensed Departments.

(a) Each of the Loan Parties and each Restricted Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business except for (i) such defects in title or failure to have such title or other interest as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as permitted by Section 7.01.

(b) Schedule 5.07(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases) that is owned by the Loan Parties and each of their Restricted Subsidiaries as of the Effective Date, together with a list of the holders of any mortgage or other Lien thereon as of the Effective Date. Schedule 5.07(b)(2) sets forth the address (including street address and state) of all Leases of the Loan Parties, together with the name and address of each lessor with respect to each such Lease as of the Effective Date. Each of such Leases is in full force and effect and the Loan Parties are not in default in any material respect of the terms thereof.

(c) As of the Effective Date, no Loan Party or any of its Restricted Subsidiaries is party to any license for the conduct of licensed departments within the Loan Parties' Stores.

5.08 Environmental Compliance.

(a) No Loan Party or any Restricted Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) knows of any reasonable basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the knowledge of the Loan Parties: (i) none of the properties currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed by any Loan Party or any Restricted Subsidiary thereof on any property currently owned or operated by any Loan Party or any Restricted Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Restricted Subsidiary thereof; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Restricted Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or any Restricted Subsidiary thereof on any property currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party or any Restricted Subsidiary thereof is undertaking, and no Loan Party or any Restricted Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment

or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported by any Loan Party or any of its Restricted Subsidiaries to or from, any property currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

5.09 Insurance. The properties of the Loan Parties and their Restricted Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in accordance with the requirements of Section 6.07 hereof.

5.10 Taxes. Except as would not either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Loan Parties and their Restricted Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all material Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Restricted Subsidiary except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

5.11 ERISA Compliance.

(a) Except as could not reasonably be expected to result in a Material Adverse Effect, each Plan and Multiemployer Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, and each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination, opinion or advisory letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Lead Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or, to the best knowledge of the Lead Borrower, Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and neither the Lead Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Lead Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) except as otherwise disclosed in Part (c) of Schedule 5.11, as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Lead Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Lead Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Lead Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.12 Subsidiaries; Equity Interests.

As of the Effective Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.12, which Schedule sets forth, in each case, as of the Effective Date, the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. As of the Effective Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.12. As of the Effective Date, all of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and (if applicable) non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.12 free and clear of all Liens except for those created under the Security Documents and any non-consensual Lien that is permitted under Section 7.01. Part (d) of Schedule 5.12 identifies, as of the Effective Date, the designation of each Subsidiary as a Restricted Subsidiary, an Unrestricted Subsidiary and/or an Immaterial Subsidiary.

5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock.

(b) None of the Loan Parties is an "investment company" under the Investment Company Act of 1940.

5.14 Disclosure. No report, financial statement, certificate or other information furnished (in writing) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material

fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date such information was provided to the Agent and the Lenders; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information is subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrowers, that no assurance is given that any particular projections will be realized, that actual results may differ and that such differences may be material).

5.15 Compliance with Laws. Each of the Loan Parties and each Restricted Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.16 Intellectual Property; Licenses, Etc. The Loan Parties and their Restricted Subsidiaries own, or possess the right to use through one or more licenses, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses as currently conducted, and, to the best knowledge of the Loan Parties, without conflict with the rights of any other Person other than conflicts, which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Restricted Subsidiary infringes upon any rights held by any other Person which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No claim or litigation against any Loan Party alleging any such infringement regarding any of the foregoing is pending or, to the best knowledge of the Lead Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.17 Labor Matters.

There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Restricted Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened in writing that could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties comply in all material respects with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party or any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law that could reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party and its Restricted Subsidiaries, or for which any valid claim may be made against any Loan Party or any of its Restricted Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.17,

as of the Effective Date, no Loan Party or any Restricted Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement (solely with respect to employees holding a senior executive level position or above), bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. As of the Effective Date, there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board or any other Governmental Authority, and no labor organization or group of employees of any Loan Party or any Restricted Subsidiary has made a pending demand for recognition. As of the Effective Date, there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Restricted Subsidiary pending or, to the knowledge of any Loan Party, threatened in writing to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Restricted Subsidiaries except, for such complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints as could not reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Restricted Subsidiaries is bound.

5.18 Security Documents.

The Security Agreement, together with such filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to the Agent of any Pledged Collateral (as defined in the Security Agreement) required to be delivered pursuant hereto or the applicable Security Documents) creates in favor of the Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the priority, perfection or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of any Credit Party with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant hereto or the applicable Security Documents.

5.19 Solvency.

On the Effective Date after giving effect to the transactions contemplated by this Agreement, the Loan Parties, on a Consolidated basis, are Solvent.

5.20 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.20(a) is a list of all DDAs maintained by the Loan Parties as of the Effective Date (other than local level store DDAs), which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.20(b) is a list describing all arrangements as of the Effective Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.21 Sanctions Concerns and Anti-Corruption Laws.

(a) No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, controlled affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar restricted parties list enforced by any other sanctions authority with applicable jurisdiction or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation, and to the knowledge of each Borrower, the Loan Parties and their Subsidiaries are in compliance with applicable anti-corruption laws and applicable Sanctions in all material respects.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than the Other Liabilities and contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Restricted Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) as soon as available, but in any event within one hundred twenty (120) days after the end of each Fiscal Year of the Lead Borrower , a Consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case, in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm of nationally recognized

standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Lead Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Material Indebtedness or (ii) any actual or prospective breach of any financial maintenance covenant);

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the Fiscal Quarters of each Fiscal Year of the Lead Borrower, a Consolidated balance sheet of Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, and cash flows for such Fiscal Quarter and for the portion of the Lead Borrower's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, and cash flows of the Lead Borrower and its Restricted Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments, purchase accounting adjustments and the absence of footnotes;

(c) as soon as available, but in any event within thirty (30) days after the end of each of the first two (2) Fiscal Months of each Fiscal Quarter of the Lead Borrower, a Consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Month, and the related Consolidated statements of income or operations, and cash flows for such Fiscal Month, and for the portion of the Lead Borrower's Fiscal Year then ended, setting in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, and cash flows of Lead Borrower and its Restricted Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments, purchase accounting adjustments and the absence of footnotes;

(d) as soon as available, but in any event no more than sixty (60) days after the end of each Fiscal Year of Holdings, forecasts prepared by management of the Lead Borrower, in form reasonably satisfactory to the Agent, of (i) Availability, and (ii) of the Consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Restricted Subsidiaries, each of the foregoing on a monthly basis for the immediately following Fiscal Year, which forecasts, in each case, shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such forecasts (it being understood that any such forecasts are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan and that no assurance can be given that any particular forecasts will be realized, that actual results may differ and that such differences may be material).

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, (ii) in the event of any change in GAAP used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP, and (iii) a copy of management's discussion and analysis with respect to such financial statements;

(c) on the twentieth (20th) day of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Borrowing Base and Availability as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower; provided that, without limiting the Agent's rights set forth in the last proviso of this clause (c), at any time that an Accelerated Borrowing Base Delivery Event has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday;

(d) [reserved],

(e) [reserved];

(f) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(g) [reserved];

(h) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(i) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Restricted Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Restricted Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect; and

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b), or (c) or Section 6.02(d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent and/or MLPFS will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent, MLPFS, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent and MLPFS shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default (including, without limitation, any breach or non-performance of, or any default under, or with respect to Material Indebtedness of any Loan Party or any Restricted Subsidiary thereof to the extent such breach or non-performance results in a Default or Event of Default hereunder);

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect,

(c) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Restricted Subsidiary thereof and any Governmental Authority; or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Restricted Subsidiary thereof, including pursuant to any applicable Environmental Laws, in each case that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) of the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect;

(e) of the filing of any Lien for unpaid federal income Taxes against any Loan Party in excess of $3,000,000; and

(f) of any failure by any Loan Party to pay rent as and when required by the applicable Lease if such failure could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with reasonable particularity the provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities, in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation (i) except in a transaction permitted by Section 7.04 or 7.05, or (ii) except (other than with respect to the preservation of the legal existence of the Lead Borrower) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except in a transaction permitted by Section 7.04 or 7.05 and except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except, to the extent: (i) such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties, (ii) pursuant to a transaction permitted by Section 7.04 or 7.05, or (iii) that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, in either case except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance

Maintain insurance with insurance companies that the Lead Borrower (in the good faith judgment of its management team) believes are financially sound and reputable with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent), and furnish the Lenders, upon written request from the Agent, with information presented in reasonable detail as to the insurance so carried. Each such policy of insurance will as appropriate, (i) name the Agent, on behalf of the Credit Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional lender loss payable clause or endorsement that names the Agent, on behalf of the Credit Parties, as the additional lender loss payee thereunder. Each such policy of insurance will as appropriate also provide that it shall not be canceled, modified or not renewed except upon prior written notice thereof by the insurer to the Agent in accordance with the notice provisions set forth in the applicable policy.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP, (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) Maintain proper books of record and account, in which true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Loan Parties or such Restricted Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Restricted Subsidiary, as the case may be.

6.10 Inspection Rights.

(a) Upon the request of the Agent after reasonable prior notice and at reasonable times during normal business hours, permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm (subject to such accountants' customary procedures) (provided that the Lead Borrower shall be given the opportunity to participate in any such discussions), all at the expense of the Loan Parties and at such reasonable times during normal business hours, but no more than one (1) time per twelve (12) month period, upon reasonable advance notice to the Lead Borrower, provided, however, that upon the occurrence and during the continuance of an Event of Default, the Agent (or any of its representatives or independent contractors) may do any of the foregoing after reasonable prior notice and at reasonable times as often as may be reasonably desired at the expense of the Loan Parties at any time during normal business hours.

(b) Upon the request of the Agent after reasonable prior notice and at reasonable times, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations of the Loan Parties, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base, (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Loan Parties' business plan, forecasts and cash flows. The parties hereto agree that the Agent may, in its discretion, after reasonable prior notice and at reasonable times, undertake (and, subject to the immediately succeeding sentence, shall be limited to) (A) up to one (1) commercial finance examination in each twelve month period at the Loan Parties' expense; provided that if Availability is less than the greater of (x) twenty percent (20%) of the Loan Cap, and (y) $12,500,000, in either case for five (5) consecutive Business Days, the Agent may, in its discretion, undertake up to two (2) commercial finance examinations in the immediately succeeding twelve month period at the Loan Parties' expense, and (B) up to one (1) additional commercial finance examination in each twelve month period at the Lenders' expense. Notwithstanding the foregoing, if required by Law or if a Specified Event of Default shall have occurred and be continuing, after reasonable prior notice and at reasonable times, the Agent may cause additional commercial finance examinations to be undertaken at the expense of the Loan Parties.

(c) Upon the request of the Agent after reasonable prior notice and at reasonable times, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base. The parties hereto agree that the Agent may, in its discretion, after reasonable prior notice and at reasonable times, undertake (and, subject to the immediately succeeding sentence, shall be limited to) (A) up to one (1) inventory appraisal in each twelve month period at the Loan Parties' expense; provided, that if Availability is less than the greater of (x) twenty percent (20%) of the Loan Cap, and (y) $12,500,000, in either case, for five (5) consecutive Business Days, the Agent may, in its discretion, undertake up to two (2) inventory appraisals in the immediately succeeding twelve month period at the Loan Parties' expense, and (B) up to one (1) additional inventory appraisal in each twelve month period at the Lenders' expense. Notwithstanding the foregoing, (i) if required by Law or if a Specified Event of Default shall have occurred and be continuing, after reasonable prior notice and at reasonable times, the Agent may cause additional appraisals to be undertaken at the expense of the Loan Parties, and (ii) the Agent may cause an additional desktop inventory appraisal to be undertaken within 180 days following the Loan Parties' implementation of the cost method of valuation of Inventory at the expense of the Loan Parties in accordance with Section 7.13.

6.11 Additional Loan Parties.

(a) (i) Notify the Agent at the time that any Person becomes a Wholly-Owned Subsidiary of any Loan Party, and promptly thereafter (and in any event within sixty (60) days or such longer period as the Agent may agree), cause any such Person which is a Domestic Subsidiary (other than any Excluded Subsidiary) to (x) become a Loan Party by executing and delivering to

the Agent a Joinder to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem reasonably appropriate for such purpose, (y) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations to the extent required by the Security Documents, and (z) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and, if reasonably requested by the Agent, customary opinions of counsel to such Person, and (ii) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, notwithstanding the foregoing, if any Subsidiary is a Foreign Subsidiary or a Foreign Subsidiary Holding Company, the Equity Interests of such Subsidiary to be pledged shall be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary), in each case in form, content and scope reasonably satisfactory to the Agent. For the avoidance of doubt and notwithstanding anything herein or in any Security Document to the contrary, none of the assets of any Foreign Subsidiary or any Foreign Subsidiary Holding Company (including any Equity Interests held by a Foreign Subsidiary) shall be required to be pledged hereunder or under any Security Document.

(b) In no event shall compliance with this Section 6.11 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or Guarantor or permit the inclusion of any acquired assets or assets of such Subsidiary in the computation of the Borrowing Base.

(c) Notwithstanding anything to the contrary contained herein, if the Agent reasonably determines that the cost of obtaining any pledge or security interest otherwise required pursuant to this Section 6.11 is excessive in relation to the benefit thereof, then no such pledge or security interest shall be required hereunder.

6.12 Cash Management.

(a) (i) To the extent not previously delivered pursuant to the Existing Credit Agreement, on or prior to the Effective Date, deliver to the Agent copies of notifications (each, a "Credit Card Notification") reasonably satisfactory in form and substance to the Agent which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.20(b); and (ii) to the extent not previously delivered pursuant to the Existing Credit Agreement within ninety (90) days following the Effective Date (or such later date to which the Agent may agree in writing in its Permitted Discretion), enter into a Blocked Account Agreement reasonably satisfactory in form and substance to the Agent with each Blocked Account Bank (collectively, the "Blocked Accounts").

(b) ACH or wire transfer no less frequently than once each Business Day (or with such other frequency as the Agent may otherwise agree in its sole discretion), whether or not there are then any outstanding Obligations to a Blocked Account (i) all available amounts on deposit in each DDA that is not a Blocked Account (other than any Excluded Account) (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such DDAs consistent with past practices), and (ii) all payments received from all Credit Card Issuers and Credit Card Processors.

(c) After the occurrence and during the continuance of a Cash Dominion Event, cause the ACH or wire transfer to the collection account maintained by the Agent at Bank of America (the "Collection Account"), no less frequently than once each Business Day (or with such other frequency as the Agent may otherwise agree in its sole discretion), whether or not there are then any outstanding Obligations, all cash receipts and collections received by each Loan Party from all sources, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory (including without limitation, proceeds of credit card charges) and other assets (whether or not constituting Collateral);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event;

(iv) the then available cash balance of each Blocked Account (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such Blocked Accounts consistent with past practices); and

(v) the then available cash balance of each DDA (other than any Excluded Account and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) not described in clause (iv) (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such DDAs consistent with past practices).

(d) The Collection Account shall at all times during the continuance of a Cash Dominion Event be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) during the continuance of a Cash Dominion Event, the Loan Parties have no right of withdrawal from the Collection Account, (ii) the funds on deposit in the Collection Account shall at all times be collateral security for all of the Obligations, and (iii) during the continuance of a Cash Dominion Event, the funds on deposit in the Collection Account shall be applied to the Obligations as provided in Section 2.05(f) or Section 8.03, as applicable. In the event that, notwithstanding the provisions of this Section 6.12, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections (other than any amounts in any Excluded Accounts), such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Collection Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

6.13 Information Regarding the Collateral. Furnish to the Agent at least thirty (30) days after written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office or its principal place of business; (iii) any Loan Party's organizational type or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

6.14 Physical Inventories.

(a) Cause not less than one (1) physical inventory to be undertaken with respect to the Loan Parties' distribution centers and Store locations, at the expense of the Loan Parties, in each Fiscal Year (provided that at the Loan Parties' option, periodic cycle counts may be performed in lieu of such annual physical inventory at its distribution centers or any Store locations), in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent, as applicable, with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within forty-five (45) days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) to the extent that the results thereof reflect a material discrepancy from the Loan Parties' stock ledger or general ledger and shall, in any event, post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) Permit the Agent, in its discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines in its Permitted Discretion (each, at the expense of the Loan Parties).

6.15 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws; (b) obtain and renew all environmental permits reasonably necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are reasonably required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, except, in case of each of the foregoing causes, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to establishing or modifying Reserves in the manner permitted by this Agreement.

6.16 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, amendments to financing statements and other documents), that may be required under any Law, or which the Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect (to the extent required by, and subject to the limitations set forth in, the Security Documents and this Agreement) the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority (subject only to Permitted Encumbrances having priority by operation of applicable law) Lien under the Security Documents upon acquisition thereof and other than Equity Interests in a Foreign Subsidiary or a Foreign Subsidiary Holding Company not required to be pledged pursuant to Section 6.11 hereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a perfected Lien securing the Obligations and will take such actions as shall be reasonably necessary or shall be reasonably requested by any Agent to grant and perfect (to the extent required by, and subject to the limitations set forth in, the Security Documents and this Agreement) such Liens, including actions described in paragraph (a) of this Section 6.16, all at the expense of the Loan Parties. Notwithstanding the foregoing, the Loan Parties shall not be required to grant a mortgage in favor of the Agent on any owned Real Estate of any Loan Party.

6.17 Compliance with Terms of Leaseholds.

Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Restricted Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except to the extent such Lease is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Restricted Subsidiaries to do the foregoing, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.18 Designation of Subsidiaries.

The board of directors of Holdings may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) after giving effect to such designation, the Payment Conditions shall have been satisfied, (iii) none of the Borrowers may be designated as an Unrestricted Subsidiary, (iv) no Unrestricted Subsidiary shall own any Equity Interests in the Lead Borrower its Restricted Subsidiaries, (v) no Unrestricted Subsidiary shall hold any Indebtedness of, or any Lien on any property of, the Lead Borrower and its Restricted Subsidiaries, (vii) the holder of any Indebtedness of any Unrestricted Subsidiary shall not have any recourse to the Lead Borrower and its Restricted Subsidiaries with respect to such Indebtedness and (vii) no Unrestricted Subsidiary

shall be a party to any transaction or arrangement with the Lead Borrower and its Restricted Subsidiaries that would not be permitted by Section 7.09. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by Holdings and its Restricted Subsidiaries therein at the date of designation in an amount equal to the net book value of Holdings' or Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

6.19 Sanctions.

Not directly or, knowingly, indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Agent, L/C Issuer or otherwise) of Sanctions.

6.20 Anti-Corruption Laws.

Not directly or, knowingly, indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977 or any applicable anti-corruption legislation in other jurisdictions.

6.21 Post-Closing Covenant.

As promptly as practicable and in any event within the time periods after the Effective Date specified in Schedule 6.21 or such later day as the Agent agrees to in writing, deliver the documents or take the actions specified in Schedule 6.21.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than the Other Liabilities and contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), no Loan Party shall, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or authorize under the UCC or any applicable Law or statute of any jurisdiction a financing statement that names any Loan Party or any Restricted Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Restricted Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income or grant any Liens on its assets, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except Permitted Investments.

7.03 Indebtedness; Disqualified Stock.

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness, or (b) issue Disqualified Stock.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge or consolidate with or into (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided that when any Wholly-Owned Subsidiary is merging or consolidating with another Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge with or consolidate into any other Subsidiary which is a Loan Party or into a Borrower, provided that in any merger involving a Borrower, a Borrower shall be the continuing or surviving Person;

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided that (i) the Person surviving such merger shall be a Wholly-Owned Subsidiary of a Loan Party and such Person shall become a Loan Party in accordance with the provisions of Section 6.11 hereof, and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(d) any Subsidiary which is not a Borrower may liquidate or dissolve if the Lead Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Lead Borrower and is not materially disadvantageous to the Credit Parties.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each of the following shall be permitted:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party (other than Holdings);

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person (in each case other than Disqualified Stock);

(c) the Loan Parties may declare and pay cash dividends to Holdings in an amount not to exceed such amount as is necessary to permit Holdings to pay its proportionate share of (i) reasonable and customary corporate and operating expenses (including reasonable out-of-pocket expenses for legal, administrative and accounting services provided by third parties, and compensation, benefits and other amounts payable to officers and employees in connection with their employment in the ordinary course of business), (ii) tax liabilities attributable to the taxable income of the Lead Borrower and its Subsidiaries for any taxable period in which the Lead Borrower and its Subsidiaries is a member of any affiliated, consolidated, combined or unitary group the common parent of which is Holdings, and (iii) franchise fees or similar taxes and fees required to maintain its corporate existence;

(d) any Loan Party may declare and pay cash dividends to Holdings not to exceed an amount necessary to permit Holdings to pay customary indemnities and reasonable ordinary course expenses attributable to Holdings, the Lead Borrower or its respective Subsidiaries to the Sponsor pursuant to the Sponsor Management Agreement;

(e) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties and their Subsidiaries may make Restricted Payments in an amount not to exceed $5,000,000 in the aggregate per Fiscal Year to Holdings to permit Holdings or its parent to repurchase, redeem or otherwise acquire Equity Interests issued by it (and, so long as no Default or Event of Default then exists or would result therefrom, Holdings may use the proceeds of such Restricted Payments for such purpose); and

(f) if the RP Conditions are satisfied, the Lead Borrower may declare or pay cash dividends to Holdings (and, so long as the RP Conditions are satisfied, Holdings may use the proceeds of such Restricted Payments to make Restricted Payments to the holders of Holdings' Equity Interests).

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Junior Indebtedness, except (a) regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), (ii) Subordinated Indebtedness in accordance with the subordination terms thereof; provided that if any Specified Event of Default (or event, with the passage of time, the giving of notice or both would constitute a Specified Event of Default) then exists or would arise therefrom, the Loan Parties and their Subsidiaries may not utilize proceeds of Credit Extensions or Proceeds of Collateral to make any such repayments, repurchases, redemptions or defeasances described in this clause (a), (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness) as long as the Payment Conditions are satisfied, (ii) Subordinated Indebtedness (other than the Intercompany Subordinated Indebtedness) in accordance with the subordination terms thereof and as long as the Payment Conditions are satisfied, and (iii) the Intercompany Subordinated Indebtedness as long as the RP Conditions are satisfied; and (c) Permitted Refinancings of any such Indebtedness.

7.08 Change in Nature of Business.

(a) In the case of Holdings, engage in any line of business substantially different from the business conducted by Holdings on the Closing Date.

(b) In the case of any Loan Party other than Holdings, engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

(c) Without the written consent of the Required Lenders, create, acquire or maintain any Domestic Subsidiary other than a Wholly-Owned Subsidiary.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party involving aggregate payments or consideration in excess of $3.0 million, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable, taken as a whole, to the Loan Parties or such Restricted Subsidiary as would be obtainable by the Loan Parties or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate or, if in the good faith judgment of the board of directors no comparable transaction is available with which to compare such transaction, such transaction is otherwise fair to the Loan Parties or such Restricted Subsidiary from a financial point of view, provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction, (b) transactions described on Schedule 7.09 hereto, (c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (d) the payment of reasonable fees and out-of-pocket costs to directors and officers, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Lead Borrower or any of its Restricted Subsidiaries, (e) transactions among the Loan Parties and the Sponsor to the extent permitted pursuant to Section 7.06, (f) as long as no Change of Control results therefrom, any issuances of securities of Holdings (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in Holdings) of Holdings or any of its Subsidiaries, (g) (i) Restricted Payments permitted by Section 7.06, and (ii) any Permitted Investment(s) or any acquisition otherwise permitted hereunder, (h) transactions in which the Borrowers or any Restricted Subsidiary, as the case may be, delivers to the Agent a letter from an independent financial advisor stating that such transaction is fair to the Loan Parties or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Loan Parties or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Loan Parties or such Restricted Subsidiary with a Person that is not an Affiliate of the Loan Parties on an arm's length basis, (i) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Loan Parties and the Restricted Subsidiaries, in the reasonable determination of the board of directors

or the senior management of the Lead Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (j) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Lead Borrower or any parent company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Lead Borrower, (k) payments by the Loan Parties or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the board of directors in good faith, (l) (i) investments by Affiliates in securities of the Lead Borrower (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Lead Borrower generally to other investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities of the Lead Borrower contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Lead Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities, (m) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto), (n) any lease entered into between the Loan Parties or any Restricted Subsidiary, as lessee and any Affiliate of the Borrowers, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the board of directors or senior management of the Lead Borrower in good faith, (o) intellectual property licenses in the ordinary course of business or consistent with industry practice, (p) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Lead Borrower or any parent company pursuant to the equity holders agreement or the registration rights agreement entered into on or after the Effective Date, (q) transactions permitted by, and complying with, Section 7.04 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Lead Borrower or any parent company, (b) forming a holding company or (c) reincorporating the Lead Borrower in a new jurisdiction, (r) transactions undertaken in good faith (as determined by the board of directors or certified by senior management of the Lead Borrower) for the purposes of improving the consolidated tax efficiency of the Borrowers and their Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Credit Parties, when taken as a whole, in each case, as determined in good faith by the board of directors or certified by senior management of the Lead Borrower in an officer's certificate, (s) (i) transactions with a Person that is an Affiliate of the Lead Borrower (other than an Unrestricted Subsidiary) solely because the Loan Parties or any Restricted Subsidiary owns, directly or indirectly, Equity Interests in such Person and (ii) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Loan Parties, any Restricted Subsidiary or any parent company, (t) (i) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (ii) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Lead Borrower or a parent company and (w) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Lead Borrower.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party or any Subsidiary, except for (x) at the time any Subsidiary becomes a Subsidiary of any Borrower, so long as such agreement was not entered into primarily in contemplation of such Person becoming a Subsidiary of such Borrower, (y) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder or (z) customary provisions in leases and other contracts and agreements restricting the assignment thereof, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (d) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; (b) customary anti-assignment provisions in contracts restricting the assignment thereof or in contracts for the Disposition of any assets or any Subsidiary provided that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be Disposed of; or (c) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person unless such Lien is a Permitted Encumbrance.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or knowing, indirectly, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, or (b) for any purposes other than (i) the acquisition of working capital assets in the ordinary course of business, (ii) to finance Capital Expenditures, Permitted Investments and Restricted Payments of the Loan Parties, and (iii) for general corporate purposes, in each case to the extent not prohibited by applicable Law or the Loan Documents.

7.12 Amendment of Material Documents.

Amend, modify or change (a) in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Lead Borrower (on the basis of such proposed amendments, modifications or changes taken as a whole), any term or condition of any Junior Indebtedness that is Material Indebtedness (other than (i) the Intercompany Subordinated Indebtedness or (ii) as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Agent (which consent shall not be unreasonably withheld or delayed); *provided*, *however*, that no amendment, modification or change of any term or condition of any such Junior Indebtedness permitted by any subordination provisions set forth in the applicable Junior Indebtedness or any other stand-alone subordination agreement in respect thereof and, in each case consented to by the Agent shall be deemed to be materially adverse to the interests of the Lenders, or (b) the Intercompany Subordinated Indebtedness, to the extent that such amendment, modification or waiver is materially adverse to the Credit Parties.

7.13 Fiscal Year; Accounting Changes.

Change the Fiscal Year of any Loan Party without the prior written consent of the Agent, or change in any material respect the accounting policies or reporting practices of the Loan Parties (it being agreed that any change that materially affects the calculation of the Cost of Eligible Inventory included in the Borrowing Base or the calculation of the Consolidated Fixed Charge Coverage Ratio is such a change), except as required by GAAP and except that the Loan Parties may change their inventory valuation methods from the retail valuation method to the cost method of valuation of Inventory, provided that (i) the Loan Parties shall have provided the Agent with at least ten (10) days' prior written notice of such change in method, and (ii) the Agent may, in its Permitted Discretion and at the Loan Parties' expense, undertake an appraisal of the Loan Parties' inventory after giving effect to the implementation of the cost method of valuation, as provided in the last sentence of Section 6.10(c).

7.14 Deposit Accounts; Credit Card Processors.

Open new DDAs with a Blocked Account Bank (other than any Excluded Accounts and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) or enter into any agreements with Credit Card Issuers or Credit Card Processors unless the Loan Parties shall have delivered to the Agent appropriate Blocked Account Agreements or Credit Card Notifications, as applicable, consistent with the provisions of Section 6.12 and otherwise satisfactory to the Agent. Without the consent of the Agent (not to be unreasonably withheld or delayed), no Loan Party shall maintain any bank accounts with any Blocked Account Bank (other than any Excluded Accounts and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.12 hereof.

7.15 Consolidated Fixed Charge Coverage Ratio.

During the continuance of a Covenant Compliance Event, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each Fiscal Quarter (commencing with the Fiscal Quarter immediately prior to the date that the Covenant Compliance Event occurs) for the Measurement Period then ended, to be less than 1.00:1.00.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal on any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, (ii) any interest on any Loan or on any L/C Obligation, or any fee due hereunder within three (3) Business Days after the same becomes due, or (iii) any other amount (excluding Other Liabilities) payable hereunder or under any other Loan Document within five (5) Business Days after the due date thereof; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.02(c) (after a three (3) Business Day grace period when required to be delivered monthly and two (2) Business Day grace period when required to be delivered weekly; provided that during such grace period the Borrowers shall not

be permitted to make any Borrowings under this Agreement), 6.03(a), 6.05(a) (solely with respect to the Lead Borrower, other than in a transaction permitted under Section 7.04 or 7.05), 6.12 (during the continuance of a Cash Dominion Event, but otherwise subject to a three (3) Business Day grace period to the extent that such default is capable of being cured), Article VII (other than Section 7.15) or the Borrowers fail to perform or observe the covenant contained in Section 7.15; *provided* that an Event of Default pursuant to Section 7.15 shall not occur until the expiration of the Cure Deadline without the consummation of the Cure Right; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a), or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days, in each case, following receipt by the Lead Borrower of written notice from the Agent or the Required Lenders of any such failure; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made (or, if qualified by materiality in the text thereof, in any respect when made or deemed made); or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within forty-five (45) days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such final judgments and orders) exceeding $10,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) such judgment is not, within thirty (30) days after the entry thereof, satisfied, vacated, discharged or execution thereof stayed or bonded pending appeal; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which results or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC and which could reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan, which could reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason (other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations), ceases to be in full force and effect; or any Loan Party or any Restricted Subsidiary thereof contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party or any Restricted Subsidiary thereof denies in writing that it has any or further liability or obligation under any material provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted in writing by any Loan Party or any Restricted Subsidiary thereof not to be, a valid and perfected Lien on any material portion of the Collateral (to the extent required by the Security Documents and this Agreement) perfected Lien on any Collateral (other than an immaterial portion of the Collateral), with the priority required by the applicable Security Document (subject to Permitted Encumbrances); or

(k) Change of Control. There occurs any Change of Control; or

(l) [Reserved];

(m) Loss of Collateral. There occurs any uninsured loss to any of the Collateral, which loss could reasonably be expected to have a Material Adverse Effect; or

(n) [Reserved];

(o) Guaranty. The termination, revocation or attempted termination or revocation in writing by any Loan Party of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(p) Subordination. (i) The subordination or intercreditor provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in writing in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, at the request of any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, at the request of the Required Lenders, shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligations shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations (excluding Other Liabilities not then due and payable) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties (to the extent permitted by applicable Law);

(c) if so requested by the Required Lenders, require that the Loan Parties Cash Collateralize the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties; provided, however, that upon the occurrence of

any Default or Event of Default with respect to any Loan Party or any Restricted Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans, all interest accrued thereon and all other Obligations shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Obligations have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received from any Loan Party, from the liquidation of any Collateral, or on account of the Obligations shall, subject to the provisions of Section 2.16, be applied by the Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities (including indemnities due under Section 10.03 hereof), Credit Party Expenses and other amounts (including reasonable and documented fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities (including indemnities due under Section 10.03 hereof), Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer (including Credit Party Expenses to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fourth, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting principal and accrued and unpaid interest on the Swing Line Loans;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Loans and L/C Borrowings, and fees (including Letter of Credit Fees and Commitment Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Eighth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.11, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of that portion of the Obligations arising from Cash Management Services, ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations arising from Bank Products, ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Seventh above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section 8.03.

8.04 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 8.01(b), in the event that the Borrowers fail to comply with the requirement of the Financial Covenant, Holdings or any other Person designated by the Borrowers shall have the right (1) at any time during the period beginning at the start of the last fiscal quarter of the applicable Measurement Period and ending on or prior to the tenth (10th) Business Day after the date on which financial statements with respect to the Measurement Period in which such covenant is being measured are required to be delivered pursuant to Section 6.01 or (2) within ten (10) Business Day after the beginning of a Covenant Compliance Event (such later date, the "Cure Deadline"), to make a direct or indirect equity investment in the Lead Borrower in cash in the form of common Equity Interests

(or any other form reasonably acceptable to the Agent) (the "Cure Right"), and upon the receipt by the Lead Borrower of net cash proceeds pursuant to the exercise of the Cure Right (the "Cure Amount"), the Financial Covenant shall be recalculated, giving effect to a pro forma increase to Consolidated EBITDA for such Measurement Period in an amount equal to such Cure Amount; provided that such pro forma adjustment to Consolidated EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under the Financial Covenant with respect to any Measurement Period that includes the fiscal quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document.

(b) If, after the receipt of the Cure Amounts and the recalculations pursuant to clause (2) above, the Borrowers shall then be in compliance with the requirements of the Financial Covenant during such Measurement Period, the Borrowers shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; *provided* that (i) the Cure Right may be exercised on no more than five (5) occasions, (ii) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Cure Right is exercised, (iii) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Borrowers to be in pro forma compliance with the Financial Covenant (such amount, the "Necessary Cure Amount") (*provided* that if the Cure Right is exercised prior to the date financial statements are required to be delivered for such fiscal quarter then the Cure Amount shall be equal to the amount reasonably determined by the Lead Borrower in good faith that is required for purposes of complying with the Financial Covenant for such fiscal quarter (such amount, the "Expected Cure Amount"), (iv) subject to clause (3) below, all Cure Amounts shall be disregarded for purposes of determining any baskets or financial ratio calculations (other than with respect to the Financial Covenant), with respect to the covenants contained in the Loan Documents and (v) there shall be no pro forma or other reduction in Indebtedness (by netting or otherwise) with the proceeds of any Cure Amount for determining compliance with the Financial Covenant for the fiscal quarter for which such Cure Amount is deemed applied unless such proceeds are actually applied to prepay Indebtedness.

(c) Notwithstanding anything herein to the contrary, (A) to the extent that the Expected Cure Amount is (i) greater than the Necessary Cure Amount, then such difference may be used for the purposes of determining any baskets (other than any previously contributed Cure Amounts), with respect to the covenants contained in the Loan Documents and (ii) *less* than the Necessary Cure Amount, then not later than the applicable Cure Deadline, the Lead Borrower must receive a direct or indirect equity investment in cash in the form of common Equity Interests (or other forms reasonably acceptable to the Agent), which cash proceeds received by Lead Borrower shall be equal to the shortfall between such Expected Cure Amount and such Necessary Cure Amount and (B) prior to the Cure Deadline (x) the Lenders shall not be permitted to exercise any rights then available as a result of an Event of Default under Section 8.02 on the basis of a breach of the Financial Covenant so as to enable the Borrowers to consummate their Cure Rights as permitted under this Section 8.04 and (y) the Lenders shall not be required to make any Credit Extension unless and until the Lead Borrower has received the Cure Amount required to cause the Borrowers to be in compliance with the Financial Covenant.

ARTICLE IX
THE AGENT

9.01 Appointment and Authority.

Each of the Lenders (in its capacity as a Lender), the Swing Line Lender and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the other Credit Parties, and no Loan Party or any Restricted Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the 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 as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Restricted Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable to any Credit Party for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties, a Lender or the L/C Issuer. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such

condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders (excluding, for purposes of this Section 9.06 only, any Lender who is also the Agent) shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States and which shall, unless an Event of Default has occurred and is continuing at the time of such appointment, be reasonably acceptable to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders (and accepted by the Lead Borrower in accordance with the terms above) and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan

Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunning Manager or Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent, a Lender or the L/C Issuer hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i), 2.03(j), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Credit Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Credit Party or to authorize the Agent to vote in respect of the claim of any Credit Party in any such proceeding.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted and for Obligations collateralized pursuant to Section 10.11) and the expiration, termination or Cash Collateralization of all Letters of Credit (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), (ii) that is Disposed of or to be Disposed of as part of or in connection with any Disposition permitted hereunder, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to release any Lien on any Equity Interests of any Subsidiary of the Lead Borrower granted to or held by the Agent under the Security Agreement in the event that Rule 316 of Regulation S-X under applicable Securities Laws is amended, modified or interpreted by the SEC to require (or is replaced with another rule or regulation or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental Agency) of separate financial statements of such Subsidiary due to the fact that such Subsidiary's Equity Interests secure the Obligations, but only for so long as, and only to the extent, necessary to not be subject to such requirement;

(c) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(d) to release any Guarantor from its obligations under any Facility Guaranty and each other applicable Loan Document if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty and each other applicable Loan Document pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and Lien granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer.

The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Agent, at such frequency as the Agent may reasonably request, with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and if such notice is received, the Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all Borrowing Base Certificates and financial statements required to be delivered by the Lead Borrower hereunder

(c) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(d) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Borrowing Base Certificates, financial statements or Reports, and shall not be liable for any information contained in any Borrowing Base Certificate, financial statement or Report;

(e) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(f) agrees to keep all Borrowing Base Certificates, financial statements and Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(g) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection.

Each Credit Party hereby appoints each other Credit Party as agent for the purpose of perfecting Liens for the benefit of the Credit Parties, in assets which, in accordance with Article 9 of the UCC or any other Law of the United States can be perfected only by possession or control. Should any Credit Party (other than the Agent) obtain possession or control of any such Collateral, such Credit Party shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of Loan Parties hereunder, the Lenders shall indemnify the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, any sub-agent's, the Swing Line Lender's, the L/C Issuer's and their Related Parties' bad faith, gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of each Lender directly and adversely affected thereby, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Commitments hereunder or under any other Loan Document, without the written Consent of each Lender directly and adversely affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of any Lender, without the written Consent of each Lender directly and adversely affected thereby; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(iv) change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of each Lender;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof or of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written Consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.10, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(viii) change the definition of the term "Borrowing Base" (or any component definition thereof, including, without limitation, advance rates, eligible asset classes and eligibility criteria), "Reserves," "Availability Reserves," or "Inventory Reserves" if, in any case, as a result thereof, the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, *provided that* the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves or eligibility criteria as provided herein;

(ix) modify the definition of the term "Permitted Overadvance" so as to increase the amount thereof or, except as otherwise provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and

(x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or under the other Loan Documents to any other Indebtedness without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to

be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) any Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party, and (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender (other than the Agent) does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender or each affected Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and, with respect to electronic communications, except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS,

IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet , except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Revolving Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties, except to the extent such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further

exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, or (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13); and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the reasonable fees, charges and documented out-of-pocket disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit and any other Person seeking to enforce the rights of a Borrower, beneficiary, transferee, or assignee or Letter of Credit proceeds or the holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or

release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Restricted Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Restricted Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Lead Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Lead Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) Payments. All amounts due under this Section shall be payable on demand therefor.

(e) Limitation of Liability. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the L/C Issuer or the Swing Line Lender, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

10.05 Payments Set Aside. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Loan Party for liquidation or reorganization or otherwise under any Debtor Relief Law, should any Loan Party become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver, interim receiver, trustee, monitor, custodian, conservator, liquidator, rehabilitator or similar officer be appointed for all or any significant part of any Loan Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) (1) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Revolving Loans owing to it or (2) in the case of any assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment or, if the Commitment is not then in effect, the principal outstanding balance of the Revolving Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower shall be required (such consent not to be unreasonably withheld, conditioned or delayed; provided that after the passage of ten (10) Business Days from receipt of written notice to the Lead Borrower from the Agent of a proposed assignment without the Lead Borrower giving the Agent written notice of the Lead Borrower's objection to such assignment, the Lead Borrower shall be deemed to have consented to such assignment) unless (1) a Default or Event of Default under Section 8.01(a) or 8.01(f) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(B) the consent of the Agent, the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (1) (A) to any Person which is not an Eligible Assignee, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person, or (2) if at the time of such assignment the Borrowers would be obligated to pay any greater amount under Article III to the assignee than the Borrowers is then obligated to pay to the assigning Lender under such Article (and if any assignment is made in violation of the foregoing, the Borrowers will not be required to pay such greater amounts).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Lead Borrower and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request of the assignee Lender, the Borrowers (at their expense) shall execute and deliver one or more Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). No assignment shall be effective unless it has been recorded in the Register pursuant to this Section 10.06(c). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice This Section 10.06(c) shall be construed so that the Obligations (excluding Other Liabilities) are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any regulations promulgated thereunder (and any other relevant or successor provisions of the Code or such regulations).

(d) Participations. (i) Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment, and/or the Revolving Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

(i) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (iv) and clauses (vi) and (vii) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.02 as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in

any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may, at any time and without consent of any Loan Party or the Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Assignment to SPV. Notwithstanding any provision to the contrary, any Lender may assign to one or more special purpose funding vehicles (each, an "SPV") all or any portion of its funded Loans (without the corresponding Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Lender and such SPV, and may grant any such SPV the option, in such SPV's sole discretion, to provide the Borrowers all or any part of any Loans that such Lender would otherwise be obligated to make pursuant to this Agreement. Such SPVs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Lender making such assignment shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by the principal amount of any Loans held by an SPV). Notwithstanding such assignment, the Agent and Lead Borrower may deliver notices to the Lender making such assignment (as agent for the SPV) and not separately to the SPV unless the Agent and Lead Borrower are requested in writing by the SPV (or its agent) to deliver such notices separately to it. The Borrowers shall, at the reasonable request of any such Lender, execute and deliver to such Person as such Lender may designate, one or more Notes in the amount of such Lender's original Notes to evidence the Loans of such Lender and related SPV.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment or Resignation. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, or resigns as Agent in accordance with the provisions of Section 9.06, Bank of America may, (i) upon thirty (30) days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) with

duplication of any notice required under Section 9.06, upon thirty (30) days' notice to the Lead Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit, and (c) the successor Swing Line Lender shall repay all outstanding Obligations with respect to Swing Line Loans due to the resigning Swing Line Lender.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement (including any electronic agreement contained in any Platform) containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract relating to any Loan Party and its obligations, (g) with the prior written consent of the Lead Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a

non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, provided it exercises not less than reasonable care.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, each Participant, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) (other than escrow, payroll, petty cash, trust and tax accounts) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Participant, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender, such Participant, or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Participant, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the "Maximum Rate"). If the 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 and other Obligations (other than Other Liabilities not then due and owing) or, if it exceeds such unpaid principal, refunded to the

Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous letters of intent, commitment letters, agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than the Other Liabilities and contingent indemnity obligations for which claims have not been asserted) hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations (other than contingent indemnity obligations for which claims have not been asserted), the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent, in its Permitted Discretion, may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Obligations that may thereafter arise under Section 10.04 hereof.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a

provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees (except that accrued fees shall not be payable to a Defaulting Lender) and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT

(EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF.

(b) SUBMISSION TO JURISDICTION. SUBJECT TO THE LAST SENTENCE OF THIS CLAUSE (B), EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO (OR, IN THE CASE OF THE LOAN PARTIES, AGAINST ANY RELATED PARTY OF THE AGENT, ANY LENDER OR THE L/C ISSUER), IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING TO ENFORCE ANY AWARD OR JUDGMENT RIGHT UNDER THE LOAN DOCUMENTS OR TO BRING ANY ACTION OR PROCEEDING TO ENFORCE ITS RIGHTS UNDER THE LOAN DOCUMENTS WITH RESPECT TO ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party 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; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Patriot Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with Patriot the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

10.18 Foreign Asset Control Regulations. None of the advance of the Loans, the issuance of any Letters of Credit or the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of OFAC (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Patriot Act. Furthermore, none of the Borrowers or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or otherwise associated, with any such "blocked person" or in any manner violative of any such order.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event solely to the extent permitted by applicable Law, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) The Agent and each Lender agree that such Person shall not in the future issue any press releases or other public disclosure using the name of the Lead Borrower or its Subsidiaries without at least two (2) Business Days' prior notice to the Agent and the Lead Borrower and without the prior written consent of the Agent and the Lead Borrower unless such Credit Party or Affiliate is required to do so under applicable Law or an Event of Default has occurred and is then continuing. Subject to the foregoing, each Loan Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark with the Lead Borrower's consent (to the extent required pursuant to the immediately preceding sentence), which consent (if so required) shall not be unreasonably withheld, conditioned or delayed; provided that after the passage of five (5) Business Days from receipt of written notice to the Lead Borrower from the Agent or any Lender of a proposed press release or other public disclosure without the Lead Borrower giving the Agent written notice of the Lead Borrower's objection to such press release or other public disclosure, the Lead Borrower shall be deemed to have consented thereto); provided further that the Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party, or (iv) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the payment in full in cash of all the Obligations after the termination of the Commitments). The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise.

(b) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any

other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all of the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. To the extent permitted by applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(c) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all of the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(d) Without limiting the generality of the foregoing, or of any other waiver or other provision set forth in this Agreement, each Loan Party hereby absolutely, knowingly, unconditionally, and expressly waives any and all claim, defense or benefit arising directly or indirectly under any one or more of Sections 2787 to 2855 inclusive of the California Civil Code or any similar law of California.

10.22 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.23 Attachments.

The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and schedules and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 Electronic Execution of Assignments and Certain Other Documents.

The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.25 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the guaranty set forth in the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Facility Guaranty voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.25 shall remain in full force and effect until the Obligations have been indefeasibly paid in full. Each Loan Party intends this Section to constitute, and this Section 10.25 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

10.26 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

10.27 Amendment and Restatement.

This Agreement is an amendment and restatement of the Existing Credit Agreement, it being acknowledged and agreed that as of the Effective Date all obligations outstanding under or in connection with the Existing Credit Agreement and any of the other Loan Documents (such obligations, collectively, the "Existing Obligations") constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Existing Credit Agreement or the Existing Obligations. With respect to (i) any date or time period occurring and ending prior to the Effective Date, the Existing Credit Agreement and the other Loan Documents shall govern the respective rights and obligations of any party or parties hereto also party thereto and shall for such purposes remain in full force and effect; and (ii) any date or time period occurring or ending on or after the Effective Date, the rights and obligations of the parties hereto shall be governed by this Agreement (including, without limitation, the exhibits and schedules hereto) and the other Loan Documents. From and after the Effective Date, any reference to the Existing Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Existing Credit Agreement.

[remainder of page intentionally left blank; signature pages follow]

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

TORRID LLC, as Lead Borrower and as a Borrower

By: /s/ George Wehlitz, Jr.
Name: George Wehlitz, Jr.
Title: Secretary

TORRID ADMINISTRATION, INC.
TORRID MERCHANDISING, INC., each as a Borrower

By: /s/ George Wehlitz, Jr.
Name: George Wehlitz, Jr.
Title: Secretary

TORRID INC., as Holdings and as a Guarantor

By: /s/ George Wehlitz, Jr.
Name: George Wehlitz, Jr.
Title: Secretary

BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Vice President

BANK OF AMERICA, N.A., as a Lender, as L/C Issuer and as Swing Line Lender

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Robert C. Chakarian
Name: Robert C. Chakarian
Title: Vice President

Exhibit 10.4

EXECUTION VERSION

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT, dated as of June 14, 2019 (this "**Agreement**"), is among TORRID LLC, a California limited liability company (the "**Lead Borrower**"), the other Borrowers party hereto, TORRID INC., a Delaware corporation ("**Holdings**"), Bank of America, N.A., as administrative agent and collateral agent (in such capacity, including any successor thereto, the "**Agent**"), and the Lenders party hereto.

PRELIMINARY STATEMENTS

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of October 23, 2017 (as in effect immediately prior to the effectiveness of this Agreement, the "**Existing ABL Credit Agreement**"; the Existing ABL Credit Agreement as amended by this Agreement, the "**Amended ABL Credit Agreement**"; capitalized terms used but not defined herein having the meaning provided in the Amended ABL Credit Agreement), among the Borrowers, Holdings, the Lenders from time to time party thereto, and the Agent;

WHEREAS, the Borrowers have requested an amendment to the Existing ABL Credit Agreement pursuant to which certain provisions of the Existing ABL Credit Agreement will be amended as set forth herein;

WHEREAS, concurrently herewith, the Lead Borrower is entering into that certain Term Loan Credit Agreement to incur term loans in the amount of $260,000,000, the proceeds of which will be used in accordance with the Term Loan Credit Agreement, subject to the terms of the ABL Intercreditor Agreement.

NOW, **THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendments to the Existing ABL Credit Agreement. The Existing ABL Credit Agreement is hereby amended as follows:

(a) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting each reference to "$10,000,000" in the definition of "Accelerated Borrowing Base Delivery Event" and by substituting "$7,500,000" in its stead.

(b) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting "$100,000,000" in the definition of "Aggregate Commitments" and by substituting "$70,000,000" in its stead.

(c) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting the references to "Greater than 67% of the Aggregate Commitments" and "Less than 67% of the Aggregate Commitments but less than or equal to 33% of the Aggregate Commitments" in the definition of "Applicable Margin" and by substituting "Greater than or equal to 67% of the Aggregate Commitments" and "Less than 67% of the Aggregate Commitments but greater than or equal to 33% of the Aggregate Commitments", respectively in their stead.

(d) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting each reference to "$10,000,000" in the definition of "Cash Dominion Event" and by substituting "$7,500,000" in its stead.

(e) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting each reference to "$7,500,000" in the definition of "Covenant Compliance Event" and by substituting "$5,000,000" in its stead.

(f) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting "and" at the end of clause (z) of the definition of "Permitted Encumbrances", by deleting "." at the end of clause (aa) thereof and by substituting "; and" in its stead, and by adding the following new clause (bb) at the end thereof:

"(bb) Liens securing Indebtedness incurred under clause (r) of the definition of Permitted Indebtedness, together with any Permitted Refinancing in respect thereof, *provided* that such Liens shall be subject to the terms of the ABL Intercreditor Agreement."

(g) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by deleting "and" at the end of clause (p) of the definition of "Permitted Indebtedness", by deleting "." at the end of clause (q) thereof and by substituting "; and" in its stead, and by adding the following new clause (r) at the end thereof:

"(r) Indebtedness incurred pursuant to the Term Loan Facility in an aggregate principal amount not to exceed the sum of (w) $260,000,000 *plus* other Term Loan Obligations (not constituting principal and, in each case, together with any Permitted Refinancing in respect thereof (which includes, for the avoidance of doubt, Credit Agreement Refinancing Indebtedness and Refinancing Indebtedness (in each case, as defined in the Term Loan Credit Agreement as in effect on the First Amendment Effective Date and not giving effect to any subsequent amendments thereto))."

(h) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by adding the following at the end of the definition of "Junior Indebtedness": "For the avoidance of doubt, the Term Loan Facility shall not constitute Junior Indebtedness."

(i) Section 1.01 (Defined Terms) of the Existing ABL Credit Agreement is hereby amended by adding the following definitions thereto in appropriate alphabetical order:

"**ABL Intercreditor Agreement**" means the ABL Intercreditor Agreement among the Agent, Cortland Capital Market Services LLC, as agent under the Term Loan Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Lead Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**First Amendment Effective Date**" means June 14, 2019.

"**Term Loan Credit Agreement**" means the Term Loan Credit Agreement, dated as of the First Amendment Effective Date, among Holdings, the Lead Borrower, Cortland Capital Market Services LLC, as administrative agent and collateral agent, and the lenders from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Permitted Refinancing in respect thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Term Loan Credit Agreement) in each case to the extent permitted hereunder.

"**Term Loan Documents**" means, collectively, (i) the Term Loan Credit Agreement and (ii) the security documents, intercreditor agreements (including the ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Term Loan Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Permitted Refinancing of the Term Loan Facility.

"**Term Loan Facility**" means the collective reference to the Term Loan Credit Agreement, the Term Loan Documents, any notes issued pursuant thereto and any guarantee, security agreement, patent, trademark or copyright security agreements, mortgages and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Permitted Refinancing in respect thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Term Loan Facility), in each case to the extent permitted hereunder.

"**Term Loan Obligations**" means "Obligations" as defined in the Term Loan Facility as in effect on the date hereof.

(j) Article I of the Existing ABL Credit Agreement is hereby amended by adding the following new Sections 1.08 and 1.09 at the end thereof:

"**1.08 Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.09 LIBOR Discontinuation. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining the London Interbank Offered Rate ("LIBOR") as used in the definition of "LIBOR Rate" for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "**Scheduled Unavailability Date**"), or

(c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Lead Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) (any such proposed rate, a "**LIBOR Successor Rate**"), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Lead Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders do not accept such amendment.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

As used in this Section 1.08:

"**LIBOR Screen Rate**" means the LIBOR quote on the applicable screen page the Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

"**LIBOR Successor Rate Conforming Changes**" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent determines in consultation with the Lead Borrower)."

(k) Section 6.01(b) (Financial Statements) of the Existing ABL Credit Agreement is hereby amended by adding "(or, with respect to the Fiscal Quarter ending May 4, 2019, within sixty (60) days)" after "forty-five (45) days" in the first line thereof.

(l) Section 6.10 (Inspection Rights) of the Existing ABL Credit Agreement is hereby amended by deleting each reference to "$12,500,000" therein and by substituting "$10,000,000" in its stead.

(m) Section 7.10 (Burdensome Agreements) of the Existing ABL Credit Agreement is hereby amended by adding "or any Term Loan Document" after "Loan Document" in the second line thereof.

(n) Section 8.01(e) (Cross-Default) of the Existing ABL Credit Agreement is hereby amended by amending and restating such section in its entirety as follows:

"(e) Cross-Default. Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided, that, in the case of clause (B), a default under the Financial Covenants (as defined in the Term Loan Credit Agreement) in the Term Loan Credit Agreement shall not constitute a Default or Event of Default under this Agreement unless and until the earlier of (x) sixty (60) days after such default under the Term Loan Credit Agreement or (y) the lenders under the Term Loan Credit Agreement shall have accelerated the Term Loan Obligations and such acceleration shall not have been rescinded, or"

2. Representations and Warranties. To induce the other parties hereto to enter into this Agreement, the Loan Parties represent and warrant to each of the Lenders party hereto and the Agent that, after giving effect to this Agreement:

(a) The execution, delivery and performance of this Agreement by the Loan Parties and the consummation of the transactions contemplated herein are within the Loan Parties' corporate or other organizational powers.

(b) This Agreement has been duly executed and delivered by each Loan Party and constitutes a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

3. Conditions Precedent. This Agreement and the amendments set forth in Section 1 of this Agreement shall become effective on the first date when:

(a) the Agent has received counterparts of this Agreement, each of which shall be originals or .pdf copies or other facsimiles unless otherwise specified, duly executed and delivered by (x) the Lenders constituting the Required Lenders, (y) the Loan Parties and (z) the Agent;

(b) the Agent shall have received the ABL Intercreditor Agreement, acknowledged and delivered by the Loan Parties; and

(c) all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees, charges and disbursements of counsel for the Agent) of the Agent and the Lenders in connection with this Agreement and the transactions contemplated hereby shall have been paid, to the extent invoiced.

Without limiting the generality of the provisions of Section 10.01(a) of the Amended ABL Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, this Agreement or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

4. Confirmation. Each Loan Party (a) confirms its obligations under the Loan Documents, (b) confirms that its obligations under the Existing ABL Credit Agreement as modified hereby are entitled to the benefits of the Liens and pledges set forth in the Loan Documents and remain in full force and effect and (c) agrees that the Existing ABL Credit Agreement as modified hereby is the "Credit Agreement" under and for all purposes of the Loan Documents.

5. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except in accordance with the Amended ABL Credit Agreement. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

6. Loan Document. This Agreement shall constitute a Loan Document for all purposes of the Amended ABL Credit Agreement and the other Loan Documents.

7. Governing Law, Etc. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. SECTIONS 10.12, 10.14 AND 10.15 OF THE AMENDED ABL CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.**

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

BANK OF AMERICA, N.A., as Agent and as a Lender

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Senior Vice President

TORRID LLC,
as the Lead Borrower and as a Borrower

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

TORRID ADMINISTRATION, INC.
TORRID MERCHANDISING, INC.
each as a Borrower

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

TORRID INC.,
as Holdings and as a Guarantor

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

TORRID OHIO LLC,
as a Guarantor

By: /s/ Dennis R. Secor
Name: Dennis R. Secor
Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Brendan Hogan
Name: Brendan Hogan
Title: Assistant Vice President

Exhibit 10.5

Execution Version

SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 4, 2019 (this "**Agreement**"), is among TORRID LLC, a California limited liability company (the "**Lead Borrower**"), the other Borrowers party hereto, Torrid Intermediate LLC, a Delaware limited liability company (f/k/a TORRID INC., a Delaware corporation, "**Holdings**"), the other Guarantors party hereto, Bank of America, N.A., as administrative agent and collateral agent (in such capacity, including any successor thereto, the "**Agent**"), and the Lenders party hereto.

PRELIMINARY STATEMENTS

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of October 23, 2017 (as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of June 14, 2019, and as in effect immediately prior to the effectiveness of this Agreement, the "**Existing ABL Credit Agreement**"; the Existing ABL Credit Agreement as amended by this Agreement, the "**Amended ABL Credit Agreement**"; capitalized terms used but not defined herein having the meaning provided in the Amended ABL Credit Agreement), among the Borrowers, Holdings, the other Guarantors, the Lenders from time to time party thereto and the Agent; and

WHEREAS, the Borrowers have requested an amendment to the Existing ABL Credit Agreement pursuant to which certain provisions of the Existing ABL Credit Agreement will be amended as set forth herein.

NOW, **THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendments to the Existing ABL Credit Agreement. The Existing ABL Credit Agreement is hereby amended as follows:

(a) Section 1.01 of the Existing ABL Credit Agreement is hereby amended by adding the following definitions thereto in appropriate alphabetical order:

"**Independent Assets or Operations**" means, with respect to any Parent Company, that Parent Company's' total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Lead Borrower and its Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

"**Parent Company**" means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Equity Interests of the Lead Borrower.

(b) Section 6.01 of the Existing ABL Credit Agreement is hereby amended by adding the following new paragraph immediately following clause (d) thereof:

"Notwithstanding the foregoing, the obligations referred to in Sections 6.01(a) through 6.01(c) may be satisfied with respect to financial information of the Lead Borrower and its Restricted Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Lead Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section

6.01); provided that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a Parent Company of the Lead Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Lead Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(a) (it being understood that such information may be audited at the option of the Lead Borrower), such materials are accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Lead Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Material Indebtedness or (ii) any actual or prospective breach of any financial maintenance covenant)."

2. Representations and Warranties. To induce the other parties hereto to enter into this Agreement, the Loan Parties represent and warrant to each of the Lenders party hereto and the Agent that, after giving effect to this Agreement:

(a) The execution, delivery and performance of this Agreement by the Loan Parties and the consummation of the transactions contemplated herein are within the Loan Parties' corporate or other organizational powers.

(b) This Agreement has been duly executed and delivered by each Loan Party and constitutes a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

3. Conditions Precedent. This Agreement and the amendments set forth in Section 1 of this Agreement shall become effective on the first date when:

(a) the Agent has received counterparts of this Agreement, each of which shall be originals or .pdf copies or other facsimiles unless otherwise specified, duly executed and delivered by (x) the Lenders constituting the Required Lenders, (y) the Loan Parties and (z) the Agent; and

(b) all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees, charges and disbursements of counsel for the Agent) of the Agent and the Lenders in connection with this Agreement and the transactions contemplated hereby shall have been paid, to the extent invoiced.

Without limiting the generality of the provisions of Section 10.01(a) of the Amended ABL Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, this Agreement or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

4. Confirmation. Each Loan Party (a) confirms its obligations under the Loan Documents, (b) confirms that its obligations under the Existing ABL Credit Agreement as modified hereby are entitled to the benefits of the Liens and pledges set forth in the Loan Documents and remain in full force and effect and (c) agrees that the Existing ABL Credit Agreement as modified hereby is the "Credit Agreement" under and for all purposes of the Loan Documents.

5. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except in accordance with the Amended ABL Credit Agreement. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

6. Loan Document. This Agreement shall constitute a Loan Document for all purposes of the Amended ABL Credit Agreement and the other Loan Documents.

7. Governing Law, Etc**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. SECTIONS 10.12, 10.14 AND 10.15 OF THE AMENDED ABL CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.**

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

BANK OF AMERICA, N.A.,
as Agent and as a Lender

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Senior Vice President

TORRID LLC,
as the Lead Borrower and as a Borrower

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TORRID ADMINISTRATION, INC.
TORRID MERCHANDISING, INC.
each as a Borrower

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TORRID INTERMEDIATE LLC
as Holdings and as a Guarantor

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

TORRID OHIO LLC,
as a Guarantor

By: /s/ Elizabeth Muñoz
Name: Elizabeth Muñoz
Title: Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Brendan Hogan
Name: Brendan Hogan
Title: Assistant Vice President

Exhibit 10.6

EXECUTION VERSION

AMENDED AND RESTATED SERVICES AGREEMENT

by and between

HOT TOPIC, INC.

and

TORRID LLC

dated as of

March 21, 2019

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This AMENDED AND RESTATED SERVICES AGREEMENT (this "Agreement"), dated as of March 21, 2019, is entered into by and between Hot Topic, Inc., a California corporation ("Hot Topic"), and Torrid LLC, a California limited liability company ("Torrid" and, together with Hot Topic, each a "Party" and together the "Parties").

W I T N E S S E T H:

WHEREAS, Hot Topic and Torrid were previously parties to that certain Transition Services Agreement, dated as of May 1, 2015 (the "TSA");

WHEREAS, Hot Topic and Torrid terminated the TSA and the services thereunder and entered into that certain Services Agreement dated as of June 2, 2017 (the "Services Agreement"), pursuant to which Hot Topic agreed to provide certain services to Torrid on the terms and conditions contained in the Services Agreement;

WHEREAS, the Parties now desire to amend and restate the Services Agreement through this Agreement; and

WHEREAS, the Parties hereby now amend and restate the Services Agreement in its entirety and replace the Services Agreement in its entirety with this Agreement.

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

ARTICLE I
Services and Compensation

1.1 Services. Torrid hereby engages Hot Topic to provide, and Hot Topic hereby agrees to provide or cause to be provided in accordance with this Agreement, to and for the benefit of Torrid those services described in the Schedules attached hereto (each such scheduled service, a "Service") until the earlier of (i) the expiration of the Term or (ii) such time as any or all of such Services are terminated in accordance with Section 2.2. Hot Topic may provide the Services through one or more of its Affiliates; provided that Hot Topic shall remain responsible for the provision thereof.

1.2 Compensation for Services.

(a) In consideration for the Services provided to Torrid hereunder, Torrid shall pay Hot Topic the amounts specified in the Schedules attached hereto (collectively, the "Fees") and shall reimburse Hot Topic for the actual and documented out-of-pocket expenses (the "Additional Expenses") reasonably incurred by Hot Topic in providing such Services; provided that Torrid shall not be obligated to reimburse Hot Topic for any Additional Expenses unless such Additional Expenses have been approved by Torrid in advance (such approval not to be unreasonably withheld, conditioned or delayed). The Fees are subject to (i) increase or decrease based upon changes in Torrid's business operations and forecasts, in each case, to the extent specified in the Schedules attached hereto, (ii) increase as provided for below in this Section 1.2(a) and (iii) decrease in the event that Torrid terminates one or more Services in accordance with

Section 2.2(b). The Parties acknowledge that the calculation of the Fees for each of the Services hereunder is intended to reflect an allocation of the costs to provide such Services as is consistent with that in effect as of the date of this Agreement and to permit Hot Topic to receive reimbursement of its out-of-pocket costs incurred to provide such Services. Accordingly, in furtherance of the foregoing, no later than thirty (30) days prior to the end of each calendar year during the Term, the Parties shall convene to negotiate in good faith any potential increase to the Fees for the Services for the immediately succeeding calendar year that are attributable to increases in such costs to Hot Topic to provide such Services for such calendar year (e.g., increases in labor costs, travel and related costs, third party costs, etc.). Any increase in such costs shall be allocated as between Hot Topic and Torrid in a manner that is consistent with the allocation of such costs as in effect as of the date of this Agreement (it being agreed that such allocation may change based on an increase or decrease in the respective business operations of each of Hot Topic and Torrid). Subject to the preceding sentence, so long as Hot Topic provides Torrid with reasonably satisfactory documentation evidencing the aforementioned increase in its out-of-pocket costs to provide Torrid the applicable Service for the immediately succeeding calendar year, the Fees for such Service shall be so increased; provided that, any increase in Fees for any such Service of more than 10% shall require Torrid's prior written consent.

(b) Torrid acknowledges and agrees that as of the date hereof, Hot Topic has incurred or has made a binding commitment to incur on behalf of Torrid certain costs and expenses with respect to the items set forth on Annex A attached hereto (the "Pre-Approved Expenses") in connection with its performance of the Services. Torrid further acknowledges and agrees that Hot Topic would not have made any of the Pre-Approved Expenses absent Torrid's entry into this Agreement and agreement to engage Hot Topic for the provision of Services for the duration of the Term. Accordingly, Torrid hereby agrees that such Pre-Approved Expenses shall constitute Additional Expenses that are payable by Torrid in accordance with Section 1.2(a) and, notwithstanding any early termination by Torrid of any of the Services hereunder in accordance with Section 2.2(b), Torrid shall remain liable for such Pre-Approved Expenses to the extent provided for on Annex A attached hereto. Without limiting Torrid's obligations for such Pre-Approved Expenses as provided for in this Section 1.2(b), Hot Topic agrees that in the event the applicable Service to which such Pre-Approved Expense relates is terminated in accordance with Section 2.2(b) Hot Topic shall use its commercially reasonable efforts to mitigate any damages resulting therefrom.

(c) The Fees and any Additional Expenses shall be invoiced (an "Invoice") monthly by Hot Topic, in advance, on the first (1st) day of each fiscal month; provided that the Fees labeled as "Variable Costs based on usage" set forth on Schedule 2 shall be invoiced monthly by Hot Topic, in arrears, within thirty (30) days after the end of each fiscal month. All Invoices shall be payable by Torrid no later than thirty (30) days after the date of the Invoice from Hot Topic (the date on which a payment is due, the "Invoice Due Date").

1.3 Late Payments. Any payments owing to Hot Topic pursuant to this Agreement that are not paid when due (other than as a result of a delay directly caused by Hot Topic or its Affiliates) shall bear interest at the rate of three (3) percent per annum (the "Late Payment Rate"), calculated from the date such amount was due until the date payment is received; provided that the Late Payment Rate shall not exceed the highest lawful rate of interest; provided, further, that if Torrid disputes in good faith any amount set forth on an Invoice and it is finally determined that

Torrid is not obligated to pay such disputed amount, then Torrid shall not be obligated to pay any interest (including interest at the Late Payment Rate) on such disputed amount. For clarity, Torrid shall have the right to withhold from payment any amounts it disputes in good faith, it being agreed that any undisputed amounts will be due and payable on the applicable Invoice Due Date.

1.4 Capital Investments.

(a) Hot Topic shall from time to time make such capital investments as are required in order to provide and/or support performance of the Services. Except to the extent otherwise provided in Section 1.4(b), (i) costs incurred by Hot Topic in connection with such capital investments shall be borne by Hot Topic and shall not be reimbursed by Torrid nor shall any such costs be included in Fees or Additional Expenses chargeable to Torrid and (ii) Hot Topic shall retain title to such capital investments.

(b) Notwithstanding anything to the contrary contained in Section 1.4(a), costs directly incurred by Hot Topic with respect to any capital investments incurred by Hot Topic specifically on behalf of, at the request, and with the prior written approval, of Torrid shall be for the account of Torrid and shall be included in (*i.e.*, added to) the Fees for which Torrid will be invoiced pursuant to Section 1.2 (it being agreed that there shall be no allocation of any of Hot Topic's internal costs and there shall be no mark-up with respect to any such capital investment (*i.e.*, such capital investments shall be billed to Torrid at Hot Topic's actual and reasonable direct out-of-pocket cost therefor)). Torrid shall retain title to any such capital investments. In the event that Torrid either terminates this Agreement or the provision of the Service with respect to which such capital investment was made, in each case, prior to the end of the Term pursuant to Section 2.2(b), Torrid shall remain responsible for the aforementioned costs.

1.5 Taxes. The amount of any actual and documented sales tax, value added tax, use tax, rent tax, goods and services tax or similar tax (excluding taxes on Hot Topic's income or ownership of property) that is required to be paid by Hot Topic in connection with the Services provided hereunder are included in the Fees for the Services as provided in the applicable Schedules and shall be payable monthly by Torrid as part of the monthly Invoice from Hot Topic.

1.6 Record Keeping. During the Term (as defined below), Hot Topic shall maintain the agreements, documents, books, records and files relating to its and its Affiliates' provision of Services hereunder (collectively, the "Records") and shall permit representatives of Torrid to have reasonable access upon ten (10) business days' prior written notice to Hot Topic and during normal business hours and in a manner so as not to unreasonably interfere with Hot Topic's normal operations, to all personnel and accountants having knowledge concerning its provision of Services and to its Records pertaining to its provision of Services. During the Term, upon ten (10) business days' prior written notice from Torrid and so long as it does not unreasonably interfere with Hot Topic's normal operations, Hot Topic shall furnish or cause to be furnished to Torrid and its representatives, employees, counsel and accountants access, during normal business hours, to Records relating to the Services provided by it and its Affiliates and shall permit such persons to examine and copy, at Torrid's sole cost and expense, such Records to the extent reasonably requested as reasonably necessary for financial reporting and accounting matters, the preparation and filing of any returns, reports or forms or defense of any third-party claim or assessment. Torrid agrees to cooperate so that such access does not unreasonably disrupt the normal operations of Hot Topic.

1.7 Standard of Performance; Standard of Care; Service Levels. Hot Topic shall perform the Services (a) in a professional and workmanlike manner at substantially the same standards of performance as in effect immediately prior to the date hereof and using the same degree of care as it exercises in performing the same or similar services to its operations, with priority equal to that provided to its own businesses, and (b) in accordance with any specific performance standards or performance metrics set forth in the Schedules attached hereto. For further clarity, Hot Topic shall not discriminate against Torrid in the allocation and prioritization of resources and services or otherwise in the provision of the Services. It is the intention of the Parties that Torrid's use of any Service shall be at the level of use required as of the date of this Agreement and Hot Topic hereby agrees to provide Services that satisfy such level of use; provided that, the Parties shall discuss in good faith any appropriate adjustments to the service level for any Service (whether based upon Torrid's forecasts of such Services or otherwise).

1.8 Nature of the Services/Changes. Each of Hot Topic and Torrid acknowledges that Hot Topic may make changes or modifications from time to time for operational and other reasons to the specifications of any Services involving systems and associated computer programs, products, equipment and services or the manner of performing the Services; provided that (a) no such changes or modifications shall limit Hot Topic's obligation to provide the Services in accordance with the standards provided for herein, (b) Hot Topic shall schedule and implement such changes and modifications in a manner designed to minimize any potential interruption or adverse effects to the greatest extent possible, and (c) Hot Topic shall provide to Torrid reasonable advance notice of (i) any material changes or modifications, regardless of anticipated effect on Service delivery, and (ii) any changes or modifications that may disrupt the Services in any material respect.

1.9 Use of Third Parties. In those instances in which the provision of a Service by Hot Topic requires the use of a third-party product or service that will require payment of additional consideration by Hot Topic, and the payment of such consideration is not contemplated by this Agreement (including the Schedules hereto, as applicable) or has not been previously agreed by the Parties, then Hot Topic will provide Torrid with thirty (30) days' prior written notice detailing the amount of such additional consideration and Torrid will then have the option to (a) procure its own third-party products or services at its own expense for such Service(s) (in which case, Torrid shall not be required to pay the Fees or any Additional Expenses in respect of such Service(s) or, for the avoidance of doubt, the additional consideration contemplated by this Section 1.9) or (b) authorize Hot Topic to incur the required additional consideration on its behalf and at Torrid's expense and such additional consideration (without mark-up) will be billable as Fees to Torrid under this Agreement.

1.10 Intellectual Property.

(a) Each Party and their respective Affiliates shall retain ownership of all right, title and interest in and to the respective Intellectual Property owned or controlled by them and any and all improvements, modifications and derivative works thereof. Subject to any other written agreement between the Parties, neither Party shall acquire any right, title or interest, express or implied, in or to such Intellectual Property of the other Party.

(b) All data created by Hot Topic on behalf of Torrid in connection with the performance of the Services or Additional Services (as defined below) or delivered to Torrid in connection with the provision of a Service or Additional Service (as defined below), and in each case, relating exclusively to the business of Torrid, shall be owned by Torrid. Hot Topic shall provide to Torrid access to any such data at all times throughout the Term and shall provide to Torrid a complete copy of such data as may be requested by Torrid from time to time.

1.11 Additional Services. Torrid may, upon written notice to Hot Topic, identify and request that Hot Topic provide to it additional services that are reasonably related to the Services or that were provided by Hot Topic to it prior to the date of this Agreement (the "Additional Services"). To the extent any Additional Services are so requested by Torrid, Hot Topic will consider in good faith such request. If and to the extent that the Parties mutually agree on the provision by Hot Topic to Torrid of such service (including the nature thereof, the length of time for which such service will be provided and any incremental Fees payable therefor), the Parties will enter into an amendment to this Agreement to add such service to the Schedules hereto and and such Additional Service shall thereupon be deemed to be a "Service" hereunder for all purposes hereof.

1.12 Cooperation. The Parties shall cooperate in good faith with each other to carry out the intent of this Agreement, including by providing any reasonably requested information to each other and/or third parties that may be reasonably necessary for the provision of the Services hereunder. In furtherance of the foregoing, in connection with the delivery by Torrid of any forecasts contemplated by this Agreement and/or the Schedules attached hereto, Torrid shall also provide Hot Topic (in a manner consistent with that in effect as of the date of this Agreement) with such information, documentation and data as is reasonably required by Hot Topic in order for Hot Topic to arrange and/or plan for the provision of the Services to which such forecasts relate for the succeeding calendar year.

1.13 Title to Assets; Methods, etc.; Ownership of Products

(a) Except in respect of capital investments as set forth in Section 1.4(b), all procedures, methods, systems, strategies, tools, equipment, facilities and other resources used by Hot Topic in connection with the provision of Services hereunder shall remain the property of Hot Topic and shall at all times be under the sole direction and control of Hot Topic.

(b) Notwithstanding any other provision of this Agreement, and except as otherwise expressly provided in the Schedules or in a separate written agreement that is not, by its terms, superseded by this Agreement, title to all products or other materials that are transported, shipped, warehoused or otherwise held in the custody of Hot Topic on behalf of Torrid shall at all times remain with Torrid, and Torrid shall at all times be the owner of record of such products or other materials, and, subject to Article III, shall be solely responsible for any matters arising from or relating to such products or other materials.

1.14 Oversight, Access, and Inspection.

(a) Hot Topic shall make available to Torrid, during normal working hours (and after hours for emergency or other extraordinary purposes, to the extent consistent with Hot Topic's general practice with respect to any particular personnel), all personnel of Hot Topic, whether employees or contractors, involved in the provision of Services hereunder, to allow Torrid to (i) ask questions, request information, or address issues relating to the Services, (ii) request modifications to, or communicate priorities with respect to, the Services, or (iii) otherwise oversee the provision of the Services and validate that the Services are being provided in a manner consistent with the obligations set forth in this Agreement.

(b) Hot Topic shall, unless otherwise agreed to by Torrid for any particular data or system, provide real-time access (with read, write, copy, and extract privileges) to Torrid or its representatives to all data of Torrid residing on hardware, servers, or systems hosted by or on behalf of, or otherwise controlled by, Hot Topic.

(c) Hot Topic shall make available to Torrid, during normal hours of operations (and after hours for emergency or other extraordinary purposes), access to all facilities owned, leased, or otherwise controlled by or operated on behalf of, Hot Topic and from which Services are provided, to allow Torrid to inspect such facilities to validate that the manner in which, and locations from which, the Services are being provided are consistent with the obligations set forth in this Agreement and otherwise reasonably satisfactory to Torrid.

ARTICLE II
Term

2.1 Term. This Agreement shall become effective on the date hereof and shall remain in full force and effect until the third (3rd) anniversary of the date hereof or any later end date of the last Service to expire as set forth on the Schedules (as the same may be extended by mutual written agreement of the Parties or as the same may be extended for any particular Service(s) as set forth in the Schedules, the "Term"), unless earlier terminated in accordance with Section 2.2. Torrid specifically agrees and acknowledges that Hot Topic's obligations to provide the Services shall, to the extent not earlier terminated immediately cease upon expiration of the Term (unless the Term is extended by mutual written agreement of the Parties). Upon the cessation of Hot Topic's obligation to provide any Service, Torrid shall immediately cease using, directly or indirectly, such Services.

2.2 Termination.

(a) If either Party hereto (the "Defaulting Party") shall fail to perform in any material respect any of its material obligations under this Agreement, whether voluntarily or involuntarily or as a result of any law or regulation or otherwise, the other Party hereto shall have the option to terminate this Agreement upon written notice to the Defaulting Party specifying the nature of such failure and stating that the other Party intends to terminate this Agreement (or if such failure relates to a specific Service, to terminate such Service) if such failure is not cured within sixty (60) (or in the event of a failure to make any undisputed payment in accordance with Section 1.2 hereof, thirty (30)) days of such written notice; provided that good faith disputes with respect to the quality of service provided with respect to any given Service shall not be deemed to be a failure to perform a material obligation for purposes of this Section 2.2(a).

(b) At any time during the Term, unless a shorter or longer termination notice period is set forth in the Schedules for any particular Service (in which case such notice period in the Schedules shall apply), Torrid may terminate (i) any or all of the Services set forth on Schedule 1 and/or Schedule 2 attached hereto by providing not less than eighteen (18) months' prior written notice to Hot Topic or (ii) any or all of the Services set forth on Schedule 3 attached hereto by providing not less than ninety (90) days' prior written notice to Hot Topic, in each case, specifying the Service(s) to be terminated and the termination date therefor (which, for Services set forth on Schedule 1 and/or Schedule 2, must be at least eighteen (18) months from the date of such notice and for the Services set forth on Schedule 3, must be at least ninety (90) days from the date of such notice). Any such notice delivered by Torrid to Hot Topic shall be irrevocable. From and after the effective date of the termination as provided for above, Torrid shall have no further liability or obligation with respect to the Fees or Additional Expenses for such terminated Service(s), except for (w) any accrued and unpaid Fees or Additional Expenses for such terminated Service(s) that were performed prior to the effective date of such termination, (x) any costs for capital investments to the extent provided for in Section 1.4(b), (y) any Pre-Approved Expenses and (z) Disengagement Costs. If Torrid terminates less than all of the Services set forth on a particular Schedule (i.e., not all of the Services set forth on such Schedule) in accordance with this Section 2.2(b), the Parties will mutually negotiate in good faith an appropriate and reasonable reduction to the Fees payable by Torrid in respect of the provision of the Services that will continue following such termination.

(c) From the date, if any, on which Torrid delivers a notice of termination pursuant to Section 2.2(b) until the effective date of such termination (the "Transition Period"), Hot Topic shall continue to provide the Service(s) that is the subject of such notice of termination and shall also provide Torrid with any reasonable assistance and/or one-time projects reasonably necessary to disengage and transition such Service(s) from Hot Topic to Torrid (or its designee(s)); provided that Torrid shall continue to pay to Hot Topic the Fees and Additional Expenses with respect to such Service as provided for in Section 1.2 and shall also reimburse Hot Topic for any Disengagement Costs. In addition, during the Transition Period, upon the reasonable request of Torrid, the Parties shall use good faith efforts to facilitate the orderly and efficient transition of the applicable Service(s) from Hot Topic to Torrid or its designee(s). As used in this Agreement, "Disengagement Costs" shall mean, (i) with respect to such terminated Service(s), any and all direct out-of-pocket fees, costs and expenses incurred by Hot Topic or its Affiliates in connection with the termination of this Agreement and/or the cessation of the Service(s) hereunder, including cancellation and/or termination charges, costs and/or fees under third party contracts and reasonable out-of-pocket charges, costs, fees and/or expenses incurred by Hot Topic as a direct consequence of the termination of such Service(s) and (ii) solely in respect of the termination of any of the Services set forth on Schedule 2 attached hereto, the out-of-pocket costs of any severance payments contractually or legally required to be paid by Hot Topic directly as a result of Hot Topic's termination of employees who were providing such terminated Services; provided that, (A) Hot Topic may notify Torrid in advance of any such employees that it intends to terminate in connection with the termination of such Services and Torrid may, in its sole discretion, offer any or all of such employees the opportunity to become an employee of Torrid and (1) in the event that any such employee chooses to become an employee of Torrid and Hot Topic is notified in writing that such employee has accepted Torrid's offer of employment, Torrid shall have no liability or obligation to Hot Topic with respect to the Disengagement Costs in clause (ii) above that would have otherwise been payable to Hot Topic in respect of such employee(s), or (2) in the

event that any such employee chooses not to become an employee of Torrid, Torrid shall pay to Hot Topic such employee's severance payments as provided for in clause (ii) above, (B) any severance shall be payable solely with respect to those employees actually providing the terminated Services and who are terminated as a direct result of the termination of any Service for which severance is payable hereunder, and (C) Hot Topic shall use reasonable efforts (1) to redeploy employees providing Services to the extent there is excess demand for personnel for other Services or for Hot Topic's own business needs, and (2) otherwise mitigate any severance costs or other Disengagement Costs.

(d) In the event of the termination of this Agreement pursuant to this Article II, the provisions of this Agreement, except for the covenants and agreements of the Parties set forth herein which by their terms are intended to survive the termination of this Agreement until fully performed, shall forthwith become void and have no effect, without any liability on the part of any party or its respective directors, officers, employees, agents or stockholders; provided that no such termination shall relieve any Party of liability for breaches of this Agreement arising on or prior to such termination. Notwithstanding anything to the contrary contained herein, Article III and Sections 4.1 and 4.2 shall survive the termination of this Agreement.

ARTICLE III
Limitation on Liability and Indemnification

3.1 Limitation on Liability. In no event will either Party be liable for any indirect, special, punitive, incidental, lost profits or consequential damages in connection with or arising out of this Agreement, except to the extent such liability arises from the gross negligence or reckless or willful misconduct of, or violation of law by, a Party. In addition, Hot Topic's maximum liability (based on breach of warranty, breach of contract, negligence, strict liability in tort or any other legal or equitable theory) to Torrid in the event of any performance or non-performance under this Agreement for any Indemnifiable Losses (as defined below) shall in no event exceed the aggregate amount of the Fees paid or payable (as of the date of the performance or non-performance giving rise to such Indemnifiable Losses) by Torrid to Hot Topic under this Agreement, except to the extent such liability arises from the gross negligence, reckless or willful misconduct or violation of law by Hot Topic.

3.2 Indemnification.

(a) Generally.

(i) Torrid shall indemnify, defend and hold harmless Hot Topic and Hot Topic's officers, directors, affiliates, shareholders, employees and agents from and against any and all losses, claims, damages, liabilities, costs, charges or expenses (including without limitation, reasonable and documented out-of-pocket attorneys' fees and costs, amounts incurred in investigating or defending a Claim (as defined below) and any amounts paid to settle an action or satisfy a judgment) joint or several ("Indemnifiable Losses") arising from, based upon or relating to Hot Topic's provision of the Services or any Additional Services; provided, that Torrid shall not be liable in any such case if and to the extent any such Indemnifiable Loss arises out of or is based upon the material breach, gross negligence, or reckless or willful misconduct of, or violation of law by Hot Topic.

(ii) Hot Topic shall indemnify, defend and hold harmless Torrid and Torrid's officers, directors, affiliates, shareholders, employees and agents from and against any and all Indemnifiable Losses arising from, based upon or relating to Hot Topic's provision of the Services or Additional Services; provided, that Hot Topic shall only be liable if and to the extent such Indemnifiable Losses arise from the material breach, gross negligence, or reckless or willful misconduct of, or violation of law by Hot Topic.

(b) Procedures. Promptly after receipt by the Party seeking indemnification of notice of the assertion by any third party of a Claim that may give rise to an Indemnifiable Loss or otherwise relates to the matters contemplated by this Section 3.2, or the commencement of any action or proceeding with respect thereto (a "Claim"), such Party (and all Persons related to such Party that may be entitled to indemnification pursuant to Section 3.2(a)(i) or 3.2(a)(ii), as the case may be, the "Indemnitee") shall notify the other Party (the "Indemnifying Party") in writing thereof; provided that the omission to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to the Indemnitee, except to the extent and only to the extent that the Indemnifying Party demonstrates that the defense of such action is materially prejudiced by the Indemnitee's failure to give such notice. In case any Claim shall be brought against the Indemnitee, the Indemnifying Party shall be entitled to participate in or to assume and undertake the defense thereof with counsel reasonably satisfactory to the Indemnitee after notice to the Indemnitee of its election so to assume and undertake the defense thereof. The Indemnifying Party shall not be liable to the Indemnitee under this Section 3.2 for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof other than reasonable costs of investigation; provided that (i) if the Indemnifying Party has failed to assume the defense and employ counsel or (ii) if the defendants in any such Claim include both the Indemnifying Party and the Indemnitee and the Indemnitee shall have reasonably concluded that there may be defenses available to it that are different from or additional to those available to the Indemnifying Party or if the Indemnitee shall have reasonably concluded that the interests of the Indemnitee reasonably may be deemed to conflict with the interests of the Indemnifying Party, then the Indemnitee shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action. The expenses and fees of such separate counsel and other expenses related to such participation shall be reimbursed by the Indemnifying Party; provided that the Indemnifying Party will not be bound by any compromise or settlement effected without its consent (such consent not to be unreasonably withheld or delayed). In the event that the Indemnitee is, directly or indirectly, conducting the defense of any action under this Article III, the Indemnifying Party shall cooperate in such defense and make available all such witnesses, records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnitee.

3.3 Remedies Cumulative. The rights of indemnification provided herein shall not be deemed exclusive of any other rights to which either party may be entitled under any agreement or contract or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in its official capacity, it being agreed by both Parties that indemnification hereunder by the Indemnifying Party shall be made to the fullest extent permitted by legal requirements.

ARTICLE IV
Additional Agreements of the Parties

4.1 Confidentiality.

(a) Hot Topic and Torrid acknowledge that in connection with the provision and receipt of the Services hereunder, either Party (the "Receiving Party") may obtain access to Confidential Information of the other Party (the "Disclosing Party"). The Receiving Party shall refrain from and shall cause its Affiliates or its or their Representatives to refrain from (i) using any Confidential Information of the Disclosing Party except for the purpose of providing or supporting the provision of the Services hereunder and (ii) disclosing any Confidential Information of the Disclosing Party to any person, except to such Receiving Party's Affiliates and its and their respective Representatives as reasonably required in connection with the exercise of each Party's rights and obligations under this Agreement (and only subject to disclosure restrictions consistent with those set forth herein), it being understood that the Receiving Party shall be responsible for any breach of the terms of this Section 4.1(a) by any of its Representatives. In the event that the Receiving Party is required by any applicable law or governmental order to disclose any Confidential Information, the Receiving Party shall (x) to the extent permissible by such applicable law or order, provide the Disclosing Party with prompt and, if practicable, advance, written notice of such requirement, (y) disclose only that information that the Receiving Party determines (with the advice of counsel) is required by such applicable law or order to be disclosed and (z) use reasonable efforts to preserve the confidentiality of such Confidential Information, including by, at the Disclosing Party's request, reasonably cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to such Confidential Information (at the Disclosing Party's sole cost and expense).

(b) For purposes of this Section 4.1(b):

"Confidential Information" shall mean information that is (i) conspicuously marked "confidential" or with similar designation; (ii) identified by the Disclosing Party as confidential before or promptly after disclosure; or (iii) disclosed in a manner, or is of a type, such that the Receiving Party should reasonably have understood under the circumstances that the information is considered confidential or proprietary, unless such information (A) is in the public domain through no fault of the Receiving Party, (B) is or hereafter becomes known to the public through no fault of the Receiving Party, (C) was, prior to the date of disclosure, already in the possession of the Receiving Party (except to the extent provided to the Receiving Party under the TSA) or (D) is provided to the Receiving Party by a third party having no confidential obligation to the other Party to this Agreement with regard to such information and is substantiated as such.

"Representatives" shall mean the directors, officers, employees, third party contractors, agents and other representatives of such Party.

4.2 Non-Solicitation. Except as otherwise expressly permitted by this Agreement, during the Term and for a period of one (1) year following any expiration or termination of this Agreement, without the prior written consent of Hot Topic, Torrid shall not, and shall not cause or direct any of its Affiliates to, directly or indirectly, solicit for hire any employee of Hot Topic or its Affiliates who has performed any of the Services under this Agreement or with whom Torrid has had contact as a result of the provision of the Services by Hot Topic or its Affiliates. For

purposes of this Agreement "solicit for hire" shall not include (x) referrals made by a placement agency, (y) responses to any general advertisements, including those appearing in a newspaper, magazine or trade publication or on a website, that were not targeted at any such employee or (z) the solicitation and hiring of any individual whose employment has been terminated by Hot Topic or its Affiliates.

4.3 Insurance. Hot Topic hereby agrees to, at all times during which Hot Topic is performing Services under this Agreement, obtain and maintain at its own cost and expense, insurance to cover itself, its employees and its subcontractors in minimum, per occurrence limits as follows:

(1)	Workers Compensation	Statutory
(2)	Commercial General Liability	$1,000,000
(3)	Commercial Automobile Liability	$2,000,000
(4)	Employer's Liability	$1,000,000
(5)	Cybersecurity	$5,000,000

The foregoing insurance policies shall name Torrid as an additional insured party, shall be for the benefit of Torrid, and Hot Topic shall provide Torrid with at least ten (10) days' prior notice to of the cancellation or any substantial modification of any such policy. Hot Topic shall furnish or cause to be furnished to Torrid a certificate of insurance satisfying the requirements of this Section 4.3.

4.4 PCI Compliance. Hot Topic hereby agrees to utilize software and services for processing transactions included in the Services that are consistent in all material respects with those used by Hot Topic for its own processing transactions (including with respect to matters of compliance with the PCI Data Security Standard and protections against fraudulent or unapproved use of payment card or identity information).

4.5 Lien and Security Interest. Hot Topic shall not have a warehouseman's lien, and shall waive any and all other liens under applicable law, upon all goods and property of Torrid that are deposited or stored with Hot Topic. In addition, Hot Topic agrees to assist and to enter into any collateral access agreement and/or other bailee arrangements with any financing sources providing secured financing to Torrid.

ARTICLE V
Miscellaneous

5.1 Entire Agreement. This Agreement (together with the Schedules hereto) constitutes the entire agreement of the Parties hereto and supersedes all prior and contemporaneous agreements and understandings, both written and oral, between the Parties hereto, or either of them, with respect to the subject matter hereof. All exhibits and schedules attached to this Agreement are expressly made a part of, and incorporated by reference into, this Agreement. For the avoidance of doubt, the Parties hereby acknowledge and agree that (a) the original Services Agreement superseded and replaced the TSA in all respects and the TSA is terminated and of no further force or effect, and (b) this Agreement amends, restates, and replaces the original Services Agreement; provided, however, that neither Party waives or disclaims, or is released from, any obligation or liability accruing under the original Services Agreement prior to the date hereof.

5.2 Governing Law and Dispute Resolution.

(a) This Agreement shall be governed by the laws of the State of California applicable to contracts entered into and to be performed within said State, without regard to the conflicts of law principles thereof. The Parties further agree that, except as expressly set forth below, venue and jurisdiction over any actions arising out of or related to this Agreement shall lie exclusively with the courts located in and having jurisdiction over Los Angeles County, California, and the Parties hereby submit to the jurisdiction thereof.

(b) Except with respect to any claim for equitable relief (the pursuit of which shall not be subject to the provisions of this arbitration provision and instead shall be subject to the provisions of Section 5.2(a)), all other claims and disputes arising under or relating to this Agreement, are to be settled by binding arbitration in the state of California, County of Los Angeles, or another location mutually agreeable to the Parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association located at www.adr.org. Any such arbitration shall be conducted by a single arbitrator experienced in the commercial contracts industry. The arbitrator shall have no authority to award punitive, consequential, or special damages. The arbitrator shall not be entitled to issue injunctive and other equitable relief. The Party initiating the arbitration shall be responsible for the initial filing fee. Thereafter each Party shall split the cost and fees of the arbitrator, including any administrative fees. All other fees and costs, including attorneys' fees, shall be borne by each Party. The demand for arbitration shall be made within a reasonable time after the claim, and in no event shall it be made after one year from when the aggrieved Party knew or should have known of the controversy, claim, dispute or breach. Any Party may enforce the arbitrator's award in a court of competent jurisdiction.

5.3 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile or email or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 5.3):

If to Hot Topic, to:

Hot Topic, Inc.
18305 E. San Jose Ave.
City of Industry, CA 91748
Attention: George Wehlitz
Email: gwehlitz@hottopic.com
Copy to: Legal Department

If to Torrid, to:

Torrid LLC
18501 E. San Jose Ave.
City of Industry, CA 91748
Attention: Dennis Secor
Email: dsecor@torrid.com
Copy to: Legal Department

5.4 Amendment and Waiver. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Hot Topic and Torrid. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

5.5 Assignment; Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors, legal representatives and permitted assigns. No Party may assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent may be withheld, conditioned or delayed in such person's sole discretion; provided, however, that, notwithstanding the foregoing, either Party may (a) assign any or all of its rights and interests hereunder to one or more of its affiliates or (b) to an acquiring entity (whether by merger, reorganization, initial public offering, acquisition or sale of stock) or to the purchaser of all or substantially all of such Party's assets, in each case, without the prior written consent of the other Party; provided, further, that the assigning Party shall remain responsible for all of its obligations hereunder. Any Party assigning any of its rights or interests hereunder in accordance with this Section 5.5 shall provide the other Party notice of such assignment within thirty (30) days after such assignment.

5.6 No Third Party Beneficiaries. Except for the provisions of Article III relating to indemnification, which are also for the benefit of the indemnified parties set forth therein nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than Hot Topic, Torrid and their respective successors or permitted assigns) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement and no person (other than as so specified) shall be deemed a third party beneficiary under or by reason of this Agreement.

5.7 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original instrument but all of which together shall together constitute one and the same agreement.

5.8 Certain Construction Rules. The article and section headings and the table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or non-U.S. statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. All references to "dollars" or "$" in this Agreement are to United States dollars.

5.9 Severability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. In case of conflict between the terms and conditions of this Agreement and any Schedule, the terms and conditions of such Schedule shall control and govern as it relates to the Service to which those terms and conditions apply.

5.10 Limited Liability. Notwithstanding any other provision of this Agreement, no stockholder, director, officer, affiliate, agent or representative of Torrid or Hot Topic, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such Party under this Agreement or in respect of any certificate delivered with respect hereto or thereto and, to the fullest extent legally permissible, each of Torrid and Hot Topic, for itself and its stockholders, directors, officers and affiliates, waives and agrees not to seek to assert or enforce any such liability that any such person otherwise might have pursuant to applicable law.

5.11 Force Majeure. Neither party hereto shall be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to acts of God, public enemy, civil war, strikes or labor disputes, or any other cause beyond the Parties' reasonable control; provided that Torrid shall not be required to make payment for any Services not performed by Hot Topic due to any such cause. Each Party hereto agrees to notify the other Party promptly upon the occurrence of any such cause and to carry out this Agreement as promptly as practicable after such cause is terminated. If a cause or event of the type specified in this Section 5.11 shall persist for a duration of fifteen (15) days or more, Torrid shall be entitled, at its option, (a) to terminate any affected Services (without payment of any termination-related charges), or (b) to procure services to replace any affected Services from a third party, in which case Hot Topic shall reimburse Torrid for any costs incurred to procure such services that are in excess of the Fees that otherwise would have been payable to Hot Topic for the Services being replaced.

5.12 Independent Contractor. The relationship of Hot Topic to Torrid under this Agreement shall be that of independent contractor and this Agreement does not establish any fiduciary relationship or other relationship of partnership, joint venture, employment, franchise or agency between them.

5.13 Personnel. Both Parties hereto agree that they shall take appropriate action by instruction of or agreement with their personnel to ensure that all personnel performing or otherwise involved with Services under this Agreement shall be bound by and comply with all of the terms and conditions of this Agreement, including, but not limited to, the terms and conditions of Section 4.1 hereof.

[*Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have duly caused the execution of this Amended and Restated Services Agreement by their duly authorized representative or officer, as of the day and year first above written.

HOT TOPIC, INC.

BY /s/ George Wehlitz
Name: George Wehlitz
Title: CFO

TORRID LLC

BY /s/ Dennis Secor
Name: Dennis Secor
Title: CFO

SCHEDULE 1
INFORMATION TECHNOLOGY (IT)

APPENDIX I TO SCHEDULE 1
BUSINESS APPLICATIONS

APPENDIX II TO SCHEDULE 1
HOT TOPIC, INC. SECURITY AND COMPLIANCE POLICY
[See attached.]

SCHEDULE 2
DISTRIBUTION, INTERNET FULFILLMENT, CUSTOMS AND LOGISTICS

SCHEDULE 3
REAL ESTATE AND CONSTRUCTION

ANNEX A

PRE-APPROVED EXPENSES

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ANNEX B

HOT TOPIC 2019 IT PROJECT ROADMAP

Exhibit 10.7

Amendment

To the

AMENDED AND RESTATED SERVICES AGREEMENT

By and between

HOT TOPIC, INC. and TORRID LLC

Dated August 1, 2019

Hot Topic, Inc. ("Hot Topic") and Torrid LLC ("Torrid") entered into an Amended and Restated Services Agreement on March 21, 2019 under which Hot Topic provides certain services to Torrid (the "Services Agreement"), and a Services Agreement effectives as of August 1, 2019 under which Torrid provides certain services to Hot Topic (the "Reverse Services Agreement"). As the assets, personnel and other resources used to provide the information technology services from Hot Topic to Torrid have now been transferred to Torrid in connection with the Reverse Services Agreement, and Torrid is now the provider of information technology services to Hot Topic under the Reverse Services Agreement, Hot Topic and Torrid (a) hereby amend the Services Agreement to remove Schedule 1 of the Services Agreement and any references thereto and provisions applicable thereto in the body of the Services Agreement, (b) acknowledge and agree that, without limiting any other agreement between the parties relating to cost allocation and recovery, there shall be no termination charges or other costs or expenses borne by either party under the Services Agreement with respect to the cessation of the provision of information technology services thereunder, and (c) further acknowledge and agree that all information technology services between the parties are addressed in the Reverse Services Agreement.

TORRID LLC

By: /s/ Dennis Secor
Name: Dennis Secor
Title: CFO

HOT TOPIC, INC.

By: /s/ George Wehlitz
Name: George Wehlitz
Title: CFO

Exhibit 10.8

SERVICES AGREEMENT

by and between

HOT TOPIC, INC.

and

TORRID LLC

dated as of

August 1, 2019

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This SERVICES AGREEMENT (this "Agreement"), dated as of March 21, 2019, is entered into by and between Hot Topic, Inc., a California corporation ("Hot Topic"), and Torrid LLC, a California limited liability company ("Torrid" and, together with Hot Topic, each a "Party" and together the "Parties").

W I T N E S S E T H:

WHEREAS, Hot Topic and Torrid entered into that certain Amended and Restated Services Agreement dated as of March 21, 2019 (the "Services Agreement"), pursuant to which Hot Topic agreed to provide certain services to Torrid on the terms and conditions contained in the Services Agreement;

WHEREAS, Hot Topic and Torrid have entered into that certain Asset Transfer Agreement dated as of June 14, 2019 (the "Asset Transfer Agreement"), pursuant to which Hot Topic will transfer to Torrid certain information technology assets, contracts, and personnel in accordance with the terms of the Asset Transfer Agreement (the "IT Transfer"); and

WHEREAS, in connection with the IT Transfer, the Parties have agreed (i) to enter into this Agreement, whereby Torrid will provide to Hot Topic those information technology services set forth herein on the terms and conditions set forth herein, and (ii) to modify the Services Agreement to remove from the scope of Hot Topic-provided services the information technology services to be provided by Torrid hereunder.

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

ARTICLE I
Services and Compensation

1.1 Services. Hot Topic hereby engages Torrid to provide, and Torrid hereby agrees to provide or cause to be provided in accordance with this Agreement, to and for the benefit of Hot Topic those services described in the Schedules attached hereto (each such scheduled service, a "Service") until the earlier of (i) the expiration of the Term or (ii) such time as any or all of such Services are terminated in accordance with Section 2.2. Torrid may provide the Services through one or more of its Affiliates; provided that Torrid shall remain responsible for the provision thereof. In the event of any conflict or inconsistency between any term or conditions of a Schedule (including with respect to financial terms and termination), on the one hand, and any term or condition of the body of this Agreement, on the other hand, the term or condition set forth in the Schedule shall control.

1.2 Compensation for Services.

(a) In consideration for the Services provided to Hot Topic hereunder, Hot Topic shall pay Torrid the amounts specified in the Schedules attached hereto (collectively, the "Fees") and shall reimburse Torrid for the actual and documented out-of-pocket expenses (the "Additional Expenses") reasonably incurred by Torrid in providing such Services, which Additional Expenses are not included in the Fees but will be reimbursed by Hot Topic or paid

directly to the applicable third-party provider, as set forth in the applicable Schedule; provided that Hot Topic shall not be obligated to reimburse Torrid for any Additional Expenses unless such Additional Expenses have been approved by Hot Topic in advance (such approval not to be unreasonably withheld, conditioned or delayed). The Fees are subject to (i) increase or decrease based upon changes in Hot Topic's business operations and forecasts, in each case, to the extent specified in the Schedules attached hereto, (ii) increase as provided for below in this Section 1.2(a) and (iii) decrease in the event that Hot Topic terminates one or more Services in accordance with Section 2.2(b). The Parties acknowledge that the calculation of the Fees for each of the Services hereunder is intended to reflect an allocation of the costs to provide such Services as is consistent with that in effect as of the date of this Agreement and to permit Torrid to receive reimbursement of its out-of-pocket costs incurred to provide such Services. Accordingly, in furtherance of the foregoing, no later than thirty (30) days prior to the end of each calendar year during the Term, the Parties shall convene to review any potential increase to the Fees for the Services as specified in the Schedules attached hereto. So long as Torrid provides Hot Topic with reasonably satisfactory documentation evidencing the aforementioned increase in its out-of-pocket costs to provide Hot Topic the applicable Service for the immediately succeeding calendar year, the Fees for such Service shall be so increased.

(b) Hot Topic acknowledges and agrees that as of the date hereof, Torrid has incurred or has made a binding commitment to incur on behalf of Hot Topic certain capital costs and expenses with respect to the items set forth on Annex A attached hereto (the "Pre-Approved Expenses") in connection with its performance of the Services. Hot Topic further acknowledges and agrees that Torrid would not have made any of the Pre-Approved Expenses absent Hot Topic's entry into this Agreement and agreement to engage Torrid for the provision of Services for the duration of the Term. Accordingly, Hot Topic hereby agrees that such Pre-Approved Expenses shall constitute Additional Expenses that are payable by Hot Topic in accordance with Section 1.2(a) and, notwithstanding any early termination by Hot Topic of any of the Services hereunder in accordance with Section 2.2(b), Hot Topic shall remain liable for such Pre-Approved Expenses to the extent provided for on Annex A attached hereto, in each case in accordance with the allocation percentage set forth on Annex A. Without limiting Hot Topic's obligations for such Pre-Approved Expenses as provided for in this Section 1.2(b), Torrid agrees that in the event the applicable Service to which such Pre-Approved Expense relates is terminated in accordance with Section 2.2(b) Torrid shall use its commercially reasonable efforts to mitigate any damages resulting therefrom.

(c) The Fees and any Additional Expenses shall be invoiced (an "Invoice") monthly by Torrid, in advance, on the first (1st) day of each fiscal month; provided that the Fees labeled as "Variable Costs based on usage" set forth on Schedule 2 shall be invoiced monthly by Torrid, in arrears, within thirty (30) days after the end of each fiscal month. All Invoices shall be payable by Hot Topic no later than thirty (30) days after the date of the Invoice from Torrid (the date on which a payment is due, the "Invoice Due Date").

1.3 Late Payments. Any payments owing to Torrid pursuant to this Agreement that are not paid when due (other than as a result of a delay directly caused by Torrid or its Affiliates) shall bear interest at the rate of three (3) percent per annum (the "Late Payment Rate"), calculated from the date such amount was due until the date payment is received; provided that the Late Payment Rate shall not exceed the highest lawful rate of interest; provided, further, that if Hot Topic disputes

in good faith any amount set forth on an Invoice and it is finally determined that Hot Topic is not obligated to pay such disputed amount, then Hot Topic shall not be obligated to pay any interest (including interest at the Late Payment Rate) on such disputed amount. For clarity, Hot Topic shall have the right to withhold from payment any amounts it disputes in good faith, it being agreed that any undisputed amounts will be due and payable on the applicable Invoice Due Date.

1.4 Capital Investments.

(a) Torrid shall from time to time make such capital investments as are required in order to provide and/or support performance of the Services. Except to the extent otherwise provided in Section 1.4(b), (i) costs incurred by Torrid in connection with such capital investments shall be reimbursed by Hot Topic as specified in the Schedules attached hereto and (ii) Torrid shall retain title to such capital investments.

(b) Notwithstanding anything to the contrary contained in Section 1.4(a), costs directly incurred by Torrid with respect to any capital investments incurred by Torrid specifically on behalf of, at the request, and with the prior written approval, of Hot Topic shall be for the account of Hot Topic and shall be included in (*i.e.*, added to) the Fees for which Hot Topic will be invoiced pursuant to Section 1.2 (it being agreed that there shall be no allocation of any of Torrid's internal costs and there shall be no mark-up with respect to any such capital investment (*i.e.*, such capital investments shall be billed to Hot Topic at Torrid's actual and reasonable direct out-of-pocket cost therefor)). Hot Topic shall retain title to any such capital investments. In the event that Hot Topic either terminates this Agreement or the provision of the Service with respect to which such capital investment was made, in each case, prior to the end of the Term pursuant to Section 2.2(b), Hot Topic shall remain responsible for the aforementioned costs.

1.5 Taxes. The amount of any actual and documented sales tax, value added tax, use tax, rent tax, goods and services tax or similar tax (excluding taxes on Torrid's income or ownership of property) that is required to be paid by Torrid in connection with the Services provided hereunder are included in the Fees for the Services as provided in the applicable Schedules and shall be payable monthly by Hot Topic as part of the monthly Invoice from Torrid.

1.6 Record Keeping. During the Term (as defined below), Torrid shall maintain the agreements, documents, books, records and files relating to its and its Affiliates' provision of Services hereunder (collectively, the "Records") and shall permit representatives of Hot Topic to have reasonable access upon ten (10) business days' prior written notice to Torrid and during normal business hours and in a manner so as not to unreasonably interfere with Torrid's normal operations, to all personnel and accountants having knowledge concerning its provision of Services and to its Records pertaining to its provision of Services. During the Term, upon ten (10) business days' prior written notice from Hot Topic and so long as it does not unreasonably interfere with Torrid's normal operations, Torrid shall furnish or cause to be furnished to Hot Topic and its representatives, employees, counsel and accountants access, during normal business hours, to Records relating to the Services provided by it and its Affiliates and shall permit such persons to examine and copy, at Hot Topic's sole cost and expense, such Records to the extent reasonably requested as reasonably necessary for financial reporting and accounting matters, the preparation and filing of any returns, reports or forms or defense of any third-party claim or assessment. Hot Topic agrees to cooperate so that such access does not unreasonably disrupt the normal operations of Torrid.

1.7 Standard of Performance; Standard of Care; Service Levels. Torrid shall perform the Services (a) in a professional and workmanlike manner at substantially the same standards of performance as in effect at Hot Topic prior to the IT Transfer and using the same degree of care as it exercises in performing the same or similar services to its operations, with priority equal to that provided to its own businesses, and (b) in accordance with any specific performance standards or performance metrics set forth in the Schedules attached hereto. For further clarity, Torrid shall not discriminate against Hot Topic in the allocation and prioritization of resources and services or otherwise in the provision of the Services. It is the intention of the Parties that Hot Topic's use of any Service shall be at the level of use required as of the date of this Agreement and Torrid hereby agrees to provide Services that satisfy such level of use; provided that, the Parties shall discuss in good faith any appropriate adjustments to the service level for any Service (whether based upon Hot Topic's forecasts of such Services or otherwise).

1.8 Nature of the Services/Changes. Each of Torrid and Hot Topic acknowledges that Torrid may make changes or modifications from time to time for operational and other reasons to the specifications of any Services involving systems and associated computer programs, products, equipment and services or the manner of performing the Services; provided that (a) no such changes or modifications shall limit Torrid's obligation to provide the Services in accordance with the standards provided for herein, (b) Torrid shall schedule and implement such changes and modifications in a manner designed to minimize any potential interruption or adverse effects to the greatest extent possible, and (c) Torrid shall provide to Hot Topic reasonable advance notice of (i) any material changes or modifications, regardless of anticipated effect on Service delivery, and (ii) any changes or modifications that may disrupt the Services in any material respect.

1.9 Use of Third Parties. In those instances in which the provision of a Service by Torrid requires the use of a third-party product or service that will require payment of additional consideration by Torrid, and the payment of such consideration is not contemplated by this Agreement (including the Schedules hereto, as applicable) or has not been previously agreed by the Parties, then Torrid will provide Hot Topic with thirty (30) days' prior written notice detailing the amount of such additional consideration and Hot Topic will then have the option to (a) procure its own third-party products or services at its own expense for such Service(s) (in which case, Hot Topic shall not be required to pay the Fees or any Additional Expenses in respect of such Service(s) or, for the avoidance of doubt, the additional consideration contemplated by this Section 1.9) or (b) authorize Torrid to incur the required additional consideration on its behalf and at Hot Topic's expense and such additional consideration (without mark-up) will be billable as Fees to Hot Topic under this Agreement.

1.10 Intellectual Property.

(a) Each Party and their respective Affiliates shall retain ownership of all right, title and interest in and to the respective Intellectual Property owned or controlled by them and any and all improvements, modifications and derivative works thereof. Subject to any other written agreement between the Parties, neither Party shall acquire any right, title or interest, express or implied, in or to such Intellectual Property of the other Party.

(b) All data created by Torrid on behalf of Hot Topic in connection with the performance of the Services or Additional Services (as defined below) or delivered to Hot Topic in connection with the provision of a Service or Additional Service (as defined below), and in each case, relating exclusively to the business of Hot Topic, shall be owned by Hot Topic. Torrid shall provide to Hot Topic access to any such data at all times throughout the Term and shall provide to Hot Topic a complete copy of such data as may be requested by Hot Topic from time to time.

1.11 Additional Services. Hot Topic may, upon written notice to Torrid, identify and request that Torrid provide to it additional services that are reasonably related to the Services or that were performed at Hot Topic prior to the IT Transfer (the "Additional Services"). To the extent any Additional Services are so requested by Hot Topic, Torrid will consider in good faith such request. If and to the extent that the Parties mutually agree on the provision by Torrid to Hot Topic of such service (including the nature thereof, the length of time for which such service will be provided and any incremental Fees payable therefor), the Parties will enter into an amendment to this Agreement to add such service to the Schedules hereto and and such Additional Service shall thereupon be deemed to be a "Service" hereunder for all purposes hereof.

1.12 Cooperation. The Parties shall cooperate in good faith with each other to carry out the intent of this Agreement, including by providing any reasonably requested information to each other and/or third parties that may be reasonably necessary for the provision of the Services hereunder. In furtherance of the foregoing, in connection with the delivery by Hot Topic of any forecasts contemplated by this Agreement and/or the Schedules attached hereto, Hot Topic shall also provide Torrid (in a manner consistent with that in effect as of the date of this Agreement) with such information, documentation and data as is reasonably required by Torrid in order for Torrid to arrange and/or plan for the provision of the Services to which such forecasts relate for the succeeding calendar year.

1.13 Title to Assets; Methods, etc.; Ownership of Products

(a) Except in respect of capital investments as set forth in Section 1.4(b), all procedures, methods, systems, strategies, tools, equipment, facilities and other resources used by Torrid in connection with the provision of Services hereunder shall remain the property of Torrid and shall at all times be under the sole direction and control of Torrid.

(b) Notwithstanding any other provision of this Agreement, and except as otherwise expressly provided in the Schedules or in a separate written agreement that is not, by its terms, superseded by this Agreement, title to all products or other materials that are transported, shipped, warehoused or otherwise held in the custody of Torrid on behalf of Hot Topic shall at all times remain with Hot Topic, and Hot Topic shall at all times be the owner of record of such products or other materials, and, subject to Article III, shall be solely responsible for any matters arising from or relating to such products or other materials.

1.14 Oversight, Access, and Inspection.

(a) Torrid shall make available to Hot Topic, during normal working hours (and after hours for emergency or other extraordinary purposes, to the extent consistent with Torrid's general practice with respect to any particular personnel), all personnel of Torrid, whether employees or contractors, involved in the provision of Services hereunder, to allow Hot Topic to (i) ask questions, request information, or address issues relating to the Services, (ii) request modifications to, or communicate priorities with respect to, the Services, or (iii) otherwise oversee the provision of the Services and validate that the Services are being provided in a manner consistent with the obligations set forth in this Agreement.

(b) Torrid shall, unless otherwise agreed to by Hot Topic for any particular data or system, provide real-time access (with read, write, copy, and extract privileges) to Hot Topic or its representatives to all data of Hot Topic residing on hardware, servers, or systems hosted by or on behalf of, or otherwise controlled by, Torrid.

(c) Torrid shall make available to Hot Topic, during normal hours of operations (and after hours for emergency or other extraordinary purposes), access to all facilities owned, leased, or otherwise controlled by or operated on behalf of, Torrid and from which Services are provided, to allow Hot Topic to inspect such facilities to validate that the manner in which, and locations from which, the Services are being provided are consistent with the obligations set forth in this Agreement and otherwise reasonably satisfactory to Hot Topic.

ARTICLE II
Term

2.1 Term. This Agreement shall become effective on the date hereof and shall remain in full force and effect until the third (3rd) anniversary of the date hereof or any later end date of the last Service to expire as set forth on the Schedules (as the same may be extended as set forth in the Schedules, the "Term"), unless earlier terminated in accordance with Section 2.2. Hot Topic specifically agrees and acknowledges that Torrid's obligations to provide the Services shall, to the extent not earlier terminated immediately cease upon expiration of the Term (unless the Term is extended by mutual written agreement of the Parties). Upon the cessation of Torrid's obligation to provide any Service, Hot Topic shall immediately cease using, directly or indirectly, such Services.

2.2 Termination.

(a) If either Party hereto (the "Defaulting Party") shall fail to perform in any material respect any of its material obligations under this Agreement, whether voluntarily or involuntarily or as a result of any law or regulation or otherwise, the other Party hereto shall have the option to terminate this Agreement upon written notice to the Defaulting Party specifying the nature of such failure and stating that the other Party intends to terminate this Agreement (or if such failure relates to a specific Service, to terminate such Service) if such failure is not cured within sixty (60) (or in the event of a failure to make any undisputed payment in accordance with Section 1.2 hereof, thirty (30) days of such written notice); provided that good faith disputes with respect to the quality of service provided with respect to any given Service shall not be deemed to be a failure to perform a material obligation for purposes of this Section 2.2(a).

(b) At any time during the Term, unless a shorter or longer termination notice period is set forth in the Schedules for any particular Service (in which case such notice period in the Schedules shall apply), Hot Topic may terminate any or all of the Services set forth on Schedule 1 by providing notice as further specified in Schedule 1. Any such notice delivered by Hot Topic to Torrid shall be irrevocable. From and after the effective date of the termination as provided for above, Hot Topic shall have no further liability or obligation with respect to the Fees or Additional Expenses for such terminated Service(s), except for (w) any accrued and unpaid Fees or Additional Expenses for such terminated Service(s) that were performed prior to the effective date of such termination, (x) any costs for capital investments to the extent provided for in Section 1.4(b), (y) any Pre-Approved Expenses and (z) Disengagement Costs. If Hot Topic terminates less than all of the Services set forth on a particular Schedule (i.e., not all of the Services set forth on such Schedule) in accordance with this Section 2.2(b), the Parties will mutually negotiate in good faith an appropriate and reasonable reduction to the Fees payable by Hot Topic in respect of the provision of the Services that will continue following such termination.

(c) From the date, if any, on which Hot Topic delivers a notice of termination pursuant to Section 2.2(b) until the effective date of such termination (the "Transition Period"), Torrid shall continue to provide the Service(s) that is the subject of such notice of termination and shall also provide Hot Topic with any reasonable assistance and/or one-time projects reasonably necessary to disengage and transition such Service(s) from Torrid to Hot Topic (or its designee(s)); provided that Hot Topic shall continue to pay to Torrid the Fees and Additional Expenses with respect to such Service as provided for in Section 1.2 and shall also reimburse Torrid for any Disengagement Costs. In addition, during the Transition Period, upon the reasonable request of Hot Topic, the Parties shall use good faith efforts to facilitate the orderly and efficient transition of the applicable Service(s) from Torrid to Hot Topic or its designee(s). As used in this Agreement, "Disengagement Costs" shall mean, with respect to such terminated Service(s), any and all direct out-of-pocket fees, costs and expenses incurred by Torrid or its Affiliates in connection with the termination of this Agreement and/or the cessation of the Service(s) hereunder, including cancellation and/or termination charges, costs and/or fees under third party contracts and reasonable out-of-pocket charges, costs, fees and/or expenses incurred by Torrid as a direct consequence of the termination of such Service(s).

(d) In the event of the termination of this Agreement pursuant to this Article II, the provisions of this Agreement, except for the covenants and agreements of the Parties set forth herein which by their terms are intended to survive the termination of this Agreement until fully performed, shall forthwith become void and have no effect, without any liability on the part of any party or its respective directors, officers, employees, agents or stockholders; provided that no such termination shall relieve any Party of liability for breaches of this Agreement arising on or prior to such termination. Notwithstanding anything to the contrary contained herein, Article III and Sections 4.1 and 4.2 shall survive the termination of this Agreement.

ARTICLE III
Limitation on Liability and Indemnification

3.1 Limitation on Liability. In no event will either Party be liable for any indirect, special, punitive, incidental, lost profits or consequential damages in connection with or arising out of this Agreement, except to the extent such liability arises from the gross negligence or reckless or willful misconduct of, or violation of law by, a Party. In addition, Torrid's maximum liability (based on breach of warranty, breach of contract, negligence, strict liability in tort or any other legal or equitable theory) to Hot Topic in the event of any performance or non-performance

under this Agreement for any Indemnifiable Losses (as defined below) shall in no event exceed the aggregate amount of the Fees paid or payable (as of the date of the performance or non-performance giving rise to such Indemnifiable Losses) by Hot Topic to Torrid under this Agreement, except to the extent such liability arises from the gross negligence, reckless or willful misconduct or violation of law by Torrid.

3.2 Indemnification.

(a) Generally.

(i) Hot Topic shall indemnify, defend and hold harmless Torrid and Torrid's officers, directors, affiliates, shareholders, employees and agents from and against any and all losses, claims, damages, liabilities, costs, charges or expenses (including without limitation, reasonable and documented out-of-pocket attorneys' fees and costs, amounts incurred in investigating or defending a Claim (as defined below) and any amounts paid to settle an action or satisfy a judgment) joint or several ("Indemnifiable Losses") arising from, based upon or relating to Torrid's provision of the Services or any Additional Services; provided, that Hot Topic shall not be liable in any such case if and to the extent any such Indemnifiable Loss arises out of or is based upon the material breach, gross negligence, or reckless or willful misconduct of, or violation of law by Torrid.

(ii) Torrid shall indemnify, defend and hold harmless Hot Topic and Hot Topic's officers, directors, affiliates, shareholders, employees and agents from and against any and all Indemnifiable Losses arising from, based upon or relating to Torrid's provision of the Services or Additional Services; provided, that Torrid shall only be liable if and to the extent such Indemnifiable Losses arise from the material breach, gross negligence, or reckless or willful misconduct of, or violation of law by Torrid.

(b) Procedures. Promptly after receipt by the Party seeking indemnification of notice of the assertion by any third party of a Claim that may give rise to an Indemnifiable Loss or otherwise relates to the matters contemplated by this Section 3.2, or the commencement of any action or proceeding with respect thereto (a "Claim"), such Party (and all Persons related to such Party that may be entitled to indemnification pursuant to Section 3.2(a)(i) or 3.2(a)(ii), as the case may be, the "Indemnitee") shall notify the other Party (the "Indemnifying Party") in writing thereof; provided that the omission to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to the Indemnitee, except to the extent and only to the extent that the Indemnifying Party demonstrates that the defense of such action is materially prejudiced by the Indemnitee's failure to give such notice. In case any Claim shall be brought against the Indemnitee, the Indemnifying Party shall be entitled to participate in or to assume and undertake the defense thereof with counsel reasonably satisfactory to the Indemnitee after notice to the Indemnitee of its election so to assume and undertake the defense thereof. The Indemnifying Party shall not be liable to the Indemnitee under this Section 3.2 for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof other than reasonable costs of investigation; provided that (i) if the Indemnifying Party has failed to assume the defense and employ counsel or (ii) if the defendants in any such Claim include both the Indemnifying Party and the Indemnitee and the Indemnitee shall have reasonably concluded that there may be defenses available to it that are different from or additional to those available to

the Indemnifying Party or if the Indemnitee shall have reasonably concluded that the interests of the Indemnitee reasonably may be deemed to conflict with the interests of the Indemnifying Party, then the Indemnitee shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action. The expenses and fees of such separate counsel and other expenses related to such participation shall be reimbursed by the Indemnifying Party; provided that the Indemnifying Party will not be bound by any compromise or settlement effected without its consent (such consent not to be unreasonably withheld or delayed). In the event that the Indemnitee is, directly or indirectly, conducting the defense of any action under this Article III, the Indemnifying Party shall cooperate in such defense and make available all such witnesses, records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnitee.

3.3 Remedies Cumulative. The rights of indemnification provided herein shall not be deemed exclusive of any other rights to which either party may be entitled under any agreement or contract or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in its official capacity, it being agreed by both Parties that indemnification hereunder by the Indemnifying Party shall be made to the fullest extent permitted by legal requirements.

ARTICLE IV
Additional Agreements of the Parties

4.1 Confidentiality.

(a) Torrid and Hot Topic acknowledge that in connection with the provision and receipt of the Services hereunder, either Party (the "Receiving Party") may obtain access to Confidential Information of the other Party (the "Disclosing Party"). The Receiving Party shall refrain from and shall cause its Affiliates or its or their Representatives to refrain from (i) using any Confidential Information of the Disclosing Party except for the purpose of providing or supporting the provision of the Services hereunder and (ii) disclosing any Confidential Information of the Disclosing Party to any person, except to such Receiving Party's Affiliates and its and their respective Representatives as reasonably required in connection with the exercise of each Party's rights and obligations under this Agreement (and only subject to disclosure restrictions consistent with those set forth herein), it being understood that the Receiving Party shall be responsible for any breach of the terms of this Section 4.1(a) by any of its Representatives. In the event that the Receiving Party is required by any applicable law or governmental order to disclose any Confidential Information, the Receiving Party shall (x) to the extent permissible by such applicable law or order, provide the Disclosing Party with prompt and, if practicable, advance, written notice of such requirement, (y) disclose only that information that the Receiving Party determines (with the advice of counsel) is required by such applicable law or order to be disclosed and (z) use reasonable efforts to preserve the confidentiality of such Confidential Information, including by, at the Disclosing Party's request, reasonably cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to such Confidential Information (at the Disclosing Party's sole cost and expense).

(b) For purposes of this Section 4.1(b):

"Confidential Information" shall mean information that is (i) conspicuously marked "confidential" or with similar designation; (ii) identified by the Disclosing Party as confidential before or promptly after disclosure; or (iii) disclosed in a manner, or is of a type, such that the Receiving Party should reasonably have understood under the circumstances that the information is considered confidential or proprietary, unless such information (A) is in the public domain through no fault of the Receiving Party, (B) is or hereafter becomes known to the public through no fault of the Receiving Party, (C) was, prior to the date of disclosure, already in the possession of the Receiving Party (except to the extent provided to the Receiving Party under the TSA) or (D) is provided to the Receiving Party by a third party having no confidential obligation to the other Party to this Agreement with regard to such information and is substantiated as such.

"Representatives" shall mean the directors, officers, employees, third party contractors, agents and other representatives of such Party.

4.2 Non-Solicitation. Except as otherwise expressly permitted by this Agreement, during the Term and for a period of one (1) year following any expiration or termination of this Agreement, without the prior written consent of Torrid, Hot Topic shall not, and shall not cause or direct any of its Affiliates to, directly or indirectly, solicit for hire any employee of Torrid or its Affiliates who has performed any of the Services under this Agreement or with whom Hot Topic has had contact as a result of the provision of the Services by Torrid or its Affiliates. For purposes of this Agreement "solicit for hire" shall not include (x) referrals made by a placement agency, (y) responses to any general advertisements, including those appearing in a newspaper, magazine or trade publication or on a website, that were not targeted at any such employee or (z) the solicitation and hiring of any individual whose employment has been terminated by Torrid or its Affiliates.

4.3 Insurance. Torrid hereby agrees to, at all times during which Torrid is performing Services under this Agreement, obtain and maintain at its own cost and expense, insurance to cover itself, its employees and its subcontractors in minimum, per occurrence limits as follows:

(1) Workers Compensation	Statutory
(2) Commercial General Liability	$1,000,000
(3) Commercial Automobile Liability	$2,000,000
(4) Employer's Liability	$1,000,000
(5) Cybersecurity	$5,000,000

The foregoing insurance policies shall name Hot Topic as an additional insured party, shall be for the benefit of Hot Topic, and Torrid shall provide Hot Topic with at least ten (10) days' prior notice to of the cancellation or any substantial modification of any such policy. Torrid shall furnish or cause to be furnished to Hot Topic a certificate of insurance satisfying the requirements of this Section 4.3.

4.4 PCI Compliance. Torrid hereby agrees to utilize software and services for processing transactions included in the Services that are consistent in all material respects with those used by Torrid for its own processing transactions (including with respect to matters of compliance with the PCI Data Security Standard and protections against fraudulent or unapproved use of payment card or identity information).

4.5 Lien and Security Interest. Torrid shall not have a warehouseman's lien, and shall waive any and all other liens under applicable law, upon all goods and property of Hot Topic that are deposited or stored with Torrid. In addition, Torrid agrees to assist and to enter into any collateral access agreement and/or other bailee arrangements with any financing sources providing secured financing to Hot Topic.

ARTICLE V
Miscellaneous

5.1 Entire Agreement. This Agreement (together with the Schedules hereto) constitutes the entire agreement of the Parties hereto and supersedes all prior and contemporaneous agreements and understandings, both written and oral, between the Parties hereto, or either of them, with respect to the subject matter hereof. All exhibits and schedules attached to this Agreement are expressly made a part of, and incorporated by reference into, this Agreement. For the avoidance of doubt, the Parties hereby acknowledge and agree that (a) the original Services Agreement superseded and replaced the TSA in all respects and the TSA is terminated and of no further force or effect, and (b) this Agreement amends, restates, and replaces the original Services Agreement; provided, however, that neither Party waives or disclaims, or is released from, any obligation or liability accruing under the original Services Agreement prior to the date hereof.

5.2 Governing Law and Dispute Resolution.

(a) This Agreement shall be governed by the laws of the State of California applicable to contracts entered into and to be performed within said State, without regard to the conflicts of law principles thereof. The Parties further agree that, except as expressly set forth below, venue and jurisdiction over any actions arising out of or related to this Agreement shall lie exclusively with the courts located in and having jurisdiction over Los Angeles County, California, and the Parties hereby submit to the jurisdiction thereof.

(b) Except with respect to any claim for equitable relief (the pursuit of which shall not be subject to the provisions of this arbitration provision and instead shall be subject to the provisions of Section 5.2(a)), all other claims and disputes arising under or relating to this Agreement, are to be settled by binding arbitration in the state of California, County of Los Angeles, or another location mutually agreeable to the Parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association located at www.adr.org. Any such arbitration shall be conducted by a single arbitrator experienced in the commercial contracts industry. The arbitrator shall have no authority to award punitive, consequential, or special damages. The arbitrator shall not be entitled to issue injunctive and other equitable relief. The Party initiating the arbitration shall be responsible for the initial filing fee. Thereafter each Party shall split the cost and fees of the arbitrator, including any administrative fees. All other fees and costs, including attorneys' fees, shall be borne by each Party. The demand for arbitration shall be made within a reasonable time after the claim, and in no event shall it be made after one year from when the aggrieved Party knew or should have known of the controversy, claim, dispute or breach. Any Party may enforce the arbitrator's award in a court of competent jurisdiction.

5.3 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile or email or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 5.3):

If to Hot Topic, to:

Hot Topic, Inc.
18305 E. San Jose Ave.
City of Industry, CA 91748
Attention: George Wehlitz
Email: gwehlitz@hottopic.com
Copy to: Legal Department

If to Torrid, to:

Torrid LLC
18501 E. San Jose Ave.
City of Industry, CA 91748
Attention: Dennis Secor
Email: dsecor@torrid.com
Copy to: Legal Department

5.4 Amendment and Waiver. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Hot Topic and Torrid. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

5.5 Assignment; Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors, legal representatives and permitted assigns. No Party may assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent may be withheld, conditioned or delayed in such person's sole discretion; provided, however, that, notwithstanding the foregoing, either Party may (a) assign any or all of its rights and interests hereunder to one or more of its affiliates or (b) to an acquiring entity (whether by merger, reorganization, initial public offering, acquisition or sale of stock) or to the purchaser of all or substantially all of such Party's assets, in each case, without the prior written consent of the other Party; provided, further, that the assigning Party shall remain responsible for all of its obligations hereunder. Any Party assigning any of its rights or interests hereunder in accordance with this Section 5.5 shall provide the other Party notice of such assignment within thirty (30) days after such assignment.

5.6 No Third Party Beneficiaries. Except for the provisions of Article III relating to indemnification, which are also for the benefit of the indemnified parties set forth therein nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than Hot Topic, Torrid and their respective successors or permitted assigns) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement and no person (other than as so specified) shall be deemed a third party beneficiary under or by reason of this Agreement.

5.7 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original instrument but all of which together shall together constitute one and the same agreement.

5.8 Certain Construction Rules. The article and section headings and the table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or non-U.S. statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. All references to "dollars" or "$" in this Agreement are to United States dollars.

5.9 Severability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. In case of conflict between the terms and conditions of this Agreement and any Schedule, the terms and conditions of such Schedule shall control and govern as it relates to the Service to which those terms and conditions apply.

5.10 Limited Liability. Notwithstanding any other provision of this Agreement, no stockholder, director, officer, affiliate, agent or representative of Torrid or Hot Topic, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such Party under this Agreement or in respect of any certificate delivered with respect hereto or thereto and, to the fullest extent legally permissible, each of Torrid and Hot Topic, for itself and its stockholders, directors, officers and affiliates, waives and agrees not to seek to assert or enforce any such liability that any such person otherwise might have pursuant to applicable law.

5.11 Force Majeure. Neither party hereto shall be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to acts of God, public enemy, civil war, strikes or labor disputes, or any other cause beyond the Parties' reasonable control; provided that Hot Topic shall not be required to make payment for any Services not performed by Torrid due to any such cause. Each Party hereto agrees to notify the other Party promptly upon the occurrence of any such cause and to carry out this Agreement as promptly as

practicable after such cause is terminated. If a cause or event of the type specified in this Section 5.11 shall persist for a duration of fifteen (15) days or more, Hot Topic shall be entitled, at its option, (a) to terminate any affected Services (without payment of any termination-related charges), or (b) to procure services to replace any affected Services from a third party, in which case Hot Topic shall reimburse Hot Topic for any costs incurred to procure such services that are in excess of the Fees that otherwise would have been payable to Hot Topic for the Services being replaced.

5.12 Independent Contractor. The relationship of Hot Topic to Hot Topic under this Agreement shall be that of independent contractor and this Agreement does not establish any fiduciary relationship or other relationship of partnership, joint venture, employment, franchise or agency between them.

5.13 Personnel. Both Parties hereto agree that they shall take appropriate action by instruction of or agreement with their personnel to ensure that all personnel performing or otherwise involved with Services under this Agreement shall be bound by and comply with all of the terms and conditions of this Agreement, including, but not limited to, the terms and conditions of Section 4.1 hereof.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have duly caused the execution of this Amended and Restated Services Agreement by their duly authorized representative or officer, as of the day and year first above written.

HOT TOPIC, INC.

BY /s/ George Wehlitz
Name: George Wehlitz
Title: CFO

TORRID LLC

BY /s/ Dennis Secor
Name: Dennis Secor
Title: CFO

SCHEDULE 1
INFORMATION TECHNOLOGY (IT)

Exhibit 10.9

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (this "Agreement") is made and entered into as of [●], 2021, by and among Torrid Holdings Inc., a Delaware corporation (the "Company") and Sycamore Partners Torrid, L.L.C, a Delaware limited liability company (the "Stockholder"). Unless otherwise indicated herein, capitalized terms used herein are defined in Section 4 hereof.

WHEREAS, as of the date hereof, the Company will effectuate an initial public offering of shares of the its common stock, par value $0.01 per share (the "Common Stock"), pursuant to a registration statement filed with the Securities and Exchange Commission (the "Initial Public Offering");

WHEREAS, the parties hereto desire to enter into this Agreement to set forth certain rights and obligations of the Stockholder with respect to the Company.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Voting Agreement; Board Nomination Rights.

(a) From and after the date hereof and until the provisions of this Section 1 cease to be effective and subject to the terms and conditions of this Agreement, the Stockholder (or its indirect beneficial owners) shall have the right to nominate persons for election to the Board (each a "Nominee") as follows (and the Stockholder hereby agrees that it shall vote, or cause to be voted, all voting securities of the Company over which the Stockholder has the power to vote or direct the voting, and shall take all other reasonably necessary or desirable actions within the Stockholder's control (but only in the Stockholder's capacity as a stockholder of the Company, including without limitation, attendance at meetings in person, via telephone or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings so that each such Nominee shall be elected to the Board):

(i) (x) the majority of the representatives nominated by the Stockholder, so long as the Stockholder's Ownership Percentage is at least 50%, (y) a number of representatives in proportion to the Stockholder's Ownership Percentage, rounded up to the nearest whole number nominated by the Stockholder, so long as the Stockholder's Ownership Percentage is less than 50% but at least 10%, and (z) the greater of (1) a number of representatives in proportion to the Stockholder's Ownership Percentage, rounded up to the nearest whole number nominated by the Stockholder and (2) one director, so long as the Stockholder's Ownership Percentage is less than 10% but at least 5%;

(ii) subject to the provisions of this Section 1, the Board shall determine the size (i.e., number of Board seats) of the Board, which as of the date hereof consists of not less than six (6) Board members (which, for the avoidance of doubt, may include one or more vacancies).

(b) The representatives designated hereunder by the Stockholder shall be nominated to serve as a Class I, Class II or Class III director (as defined in the Company's Certificate of Incorporation), as the case may be, as set forth on the Schedule of Directors attached hereto. The initial term of each Class I, Class II and Class III director shall expire as set forth in the Company's Certificate of Incorporation. Any director nominated by the Stockholder hereunder to fill a vacancy on the Board shall be designated as the same class of director as the director whose termination of services as a director created such vacancy.

(c) The Company shall pay the reasonable out-of-pocket expenses incurred by each director in connection with attending the meetings of the Board and any committee thereof.

(d) At every meeting of the Board, or a committee thereof, for which directors are nominated to stand for election by stockholders of the Company, the Stockholder will have the right to select those persons to be nominated for election to the Board for each Retiring Director that was a prior Nominee of the Stockholder in accordance with this Section 1.

(e) If a vacancy occurs because of the death, disability, disqualification, resignation or removal of a Nominee, the Stockholder shall be entitled to nominate such person's successors in accordance with this Agreement and the Board, subject to a determination of the Board in good faith, after consultation with outside legal counsel that such action would not constitute a breach of its fiduciary duties or applicable law, shall fill the vacancy with such successor Nominee.

(f) If a Nominee is not nominated or elected to the Board because of the Nominee's death, disability, disqualification, withdrawal as a nominee or for other reason is unavailable or unable to serve on the Board, the Stockholder who nominated such person shall be entitled to nominate promptly another Nominee and the director position for which such Nominee was nominated shall not be filled pending such nomination.

2. Company Obligations.

(a) The Company agrees to use its commercially reasonable efforts to assure that (i) each Nominee is included in the Board's slate of nominees to the stockholders for each election of directors, and (ii) each Nominee is included in the proxy statement prepared by management of the Company in connection with soliciting proxies for every meeting of the stockholders of the Company called with respect to the election of members of the Board, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of the Company or the Board with respect to the election of members of the Board.

(b) Notwithstanding anything herein to the contrary, the Company shall not be obligated to cause to be nominated for election to the Board or recommend to the stockholders the election of any Nominee (i) who fails to submit to the Company on a timely basis such questionnaires as the Company may reasonably require of its directors generally and such other information as the Company may reasonably request in connection with the preparation of its filings under the Securities Laws, or (ii) the Board or the Nominating Committee determines in good faith, after consultation with outside legal counsel, that such action would constitute a breach of its fiduciary duties or applicable law or violate the Company's Certificate of Incorporation; provided, however, that upon the occurrence of either (i) or (ii) above, the Company shall promptly notify the Stockholder of the occurrence of such event and permit the Stockholder to provide an alternate Nominee sufficiently in advance of any Board action, meeting of the stockholders called or written action of stockholders with respect to such election of Nominees and the Company shall use commercially reasonable efforts to perform its obligations under Section 2(a) with respect to such alternate Nominee (provided that if the Company provides at least 45 days advance notice of the occurrence of any such event such alternative Nominee must be designated by the applicable Stockholder not less than 30 days in advance of any Board action, notice of meeting of the stockholders or written action of stockholders with respect to such election of Nominees). The Company shall use commercially reasonable efforts to perform its obligations under Section 2(a) with respect to such alternate Nominee, provided that in no event shall the Company be obligated to postpone, reschedule or delay any scheduled meeting of the stockholders with respect to such election of Nominees.

(c) At any time a vacancy occurs because of the death, disability, resignation or removal of a Nominee, then the Board, or any committee thereof, shall not fill such vacancy until the earliest to occur of (i) the Stockholder has nominated a successor Nominee and the Board has filled the vacancy and appointed such successor Nominee, (ii) the Stockholder fails to nominate a successor Nominee within 30 Business Days after receiving notification of the vacancy from the Company, and (iii) the Stockholder has specifically waived its right under this Section 2(c).

(d) At any time that the Stockholder shall have any nomination rights under Section 1, the Company shall not take any action to reduce the size of the Board from six (6), except as otherwise provided herein.

3. Insurance. The Company shall, for so long as any director designated pursuant to the terms of this Agreement serves as a director of the Board, maintain directors' and officers' liability insurance in an amount determined by the Board to be reasonable and customary and that provides coverage with respect to each such director; provided, that upon such director ceasing to serve on the Board for any reason, the Company shall take all actions reasonably necessary to extend such directors' and officers' liability insurance coverage for a period of not less than six (6) years from the time at which such director ceases to serve on the Board in respect of any act or omission occurring at or prior to such time.

4. Confidentiality.

(a) From and after the date hereof, the Stockholder shall, and shall cause its Subsidiaries and controlled Affiliates to, maintain in confidence and use only in connection with its investment in the Company and for purposes of the business of the Company and its Subsidiaries, all Confidential Information. "Confidential Information" means all information concerning the Company or its Subsidiaries or the financial condition, business, operations or prospects of the Company or its Subsidiaries in the possession of or furnished to the Stockholder (including by virtue of its present or former right to nominate director(s) to the Board). The Stockholder shall exercise the same care and safeguards with respect to Confidential Information as is used to maintain the confidentiality of its own information of like character, but will, at a minimum, use reasonable care.

(b) The Stockholder may disclose Confidential Information to its Subsidiaries, Affiliates, counsel, advisers, consultants, outside contractors and other agents, on the condition that such Persons agree to keep the Confidential Information confidential to the same extent as such disclosing party is required to keep the Confidential Information confidential, solely to the extent it is reasonably necessary or appropriate to fulfill its obligations or to exercise its rights under this Agreement; provided that the disclosing party shall remain liable with respect to any breach of this Section 4 by any such Subsidiaries, Affiliates, counsel, advisers, consultants, outside contractors and other agents.

(c) Notwithstanding Section 4(a) or Section 4(b) above, the Stockholder may disclose such Confidential Information (i) to the extent that the such Person is legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, (ii) for purposes of reporting to its stockholders the performance of the Company and its Subsidiaries and for purposes of including applicable information in its financial statements, (iii) to the extent required to be disclosed by applicable law, rule or regulation; provided that in connection with any such disclosure (A) a disclosing party shall only disclose such Confidential Information as is required to be disclosed in connection with the foregoing, (B) to the extent reasonably practicable, a disclosing party shall provide the Company with prompt and advance written notice of any such intended disclosure so that the Company has a reasonable opportunity to limit such disclosure, or (if applicable, and to the extent reasonably practicable) seek a protective order or other appropriate remedy to prevent such disclosure, and (C) a disclosing party shall use its reasonable efforts to seek confidential treatment (consistent with the terms hereof) by the Person to whom such disclosure is made. The Stockholder acknowledges that money damages would not be a sufficient remedy for any breach of the provisions of this Section 4 and that the Company shall be entitled to equitable relief in a court of law in the event of, or to prevent, a breach or threatened breach of this Section 4.

(d) The obligation not to disclose Confidential Information shall not apply to any part of such Confidential Information that (i) is or becomes patented, published, or otherwise part of the public domain other than by acts of the Stockholder in contravention of this Agreement, (ii) is disclosed to the Stockholder by a third party, unless such Confidential Information was obtained by such third party directly or indirectly from the Stockholder hereto on a confidential basis, (iii) prior to disclosure under this Agreement, was already in the possession of the Stockholder, unless such Confidential Information was obtained directly or indirectly from the Stockholder on a confidential basis, or (iv) is independently acquired or developed by the Stockholder other than by acts of the Stockholder in contravention of this Agreement.

5. Definitions.

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to vote a majority of the securities having voting power for the election of directors (or other Persons acting in similar capacities) of such Person or otherwise to direct or cause the direction of the management and policies of such Person through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, the Stockholder shall not, by reason of this Agreement, be deemed to be an Affiliate of the Company.

"Board" means the board of directors of the Company.

"Business Day" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York or the City of Industry, California, are authorized or required by law to close.

"Certificate of Incorporation" means the Company's Amended and Restated Certificate of Incorporation, as the same may be amended from time to time.

"GAAP" means generally accepted accounting principles in the United States.

"Nominating Committee" means the Nominating and Corporate Governance Committee of the Board.

"Person" means an individual, corporation, partnership, association, trust, limited liability company, joint venture, unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Retiring Director" means any director whose term expires at the next annual meeting of the stockholders of the Company pursuant to the terms of the Company's Certificate of Incorporation.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Laws" means the Securities Act and the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

"Stockholder's Ownership Percentage" means, at any time, the fraction (expressed as a percentage) that results from dividing (i) the number of shares of Common Stock owned by the Stockholder and its Affiliates at such time by (ii) the total number of shares of Common Stock, in each case, as adjusted for stock splits, combinations, recapitalizations and the like).

"Subsidiary" means, at any time, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time owned or controlled directly or indirectly by such Person.

"Transfer" means, with respect to any Common Stock, to sell, assign, dispose of, exchange, or otherwise directly transfer such Common Stock or agree or commit to do any of the foregoing, except for any Transfers to an Affiliate not otherwise prohibited hereby.

6. Amendment and Waiver. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

7. Benefit of Parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise expressly provided herein, nothing herein contained shall confer or is intended to confer on any third party or entity that is not a party to this Agreement any rights under this Agreement.

8. Headings. Headings are for ease of reference only and shall not form a part of this Agreement.

9. Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of Delaware without giving effect to the principles of conflicts of laws thereof.

10. Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement may be brought against any of the parties in any federal court located in the State of Delaware or any Delaware state court, and each of the parties hereby consents to the exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such suit, action or proceeding and waives any objection to venue laid therein. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, the parties agree that service of process upon such party at the address referred to in Section 18, together with written notice of such service to such party, shall be deemed effective service of process upon such party.

11. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Entire Agreement. This Agreement (including the Schedules constituting a part of this Agreement) and any other writing signed by authorized representatives of each of the parties after the date hereof that specifically references this Agreement, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral between the parties with respect to the subject matter hereof.

13. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original. This Agreement shall become effective when each party shall have received a counterpart hereof signed by each of the other parties. An executed copy or counterpart hereof delivered by facsimile shall be deemed an original instrument.

14. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. Further Assurances. The Stockholder shall execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

16. Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal or state court located in the State of Delaware, in addition to any other remedy to which they are entitled at law or in equity.

17. Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by electronic mail or facsimile if sent during normal business hours of the recipient; but if not, then on the next Business Day, (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications will be sent to the Company and the Stockholder at the respective addresses specified below, or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any party may change such party's address for receipt of notice by giving prior written notice of the change to the sending party as provided herein.

The Company's address is:

Torrid Holdings Inc.
18501 East San Jose Avenue

City of Industry, California 91748
Attention: Brian Park, Secretary
Facsimile: [●]
E-mail: [●]

With a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Joshua N. Korff, P.C., Michael Kim, P.C. and Aslam A. Rawoof
Facsimile: (212) 446-4800
E-mail: joshua.korff@kirkland.com, michael.kim@kirkland.com and aslam.rawoof@kirkland.com

If to the Stockholder:

Sycamore Partners Torrid, L.L.C.
9 West 57th Street, 31st Floor
New York, New York 10019
Attention: Dary Kopelioff
Facsimile: [●]
E-mail: [●]

With a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Joshua N. Korff, P.C., Michael Kim, P.C. and Aslam A. Rawoof
Facsimile: (212) 446-4800
E-mail: joshua.korff@kirkland.com, michael.kim@kirkland.com and aslam.rawoof@kirkland.com

IN WITNESS WHEREOF, the parties hereto have executed this Stockholders Agreement on the day and year first above written.

TORRID HOLDINGS INC.

By: _____
Name:
Title:

SYCAMORE PARTNERS TORRID L.L.C.

By: _____
Name:
Title:

[Signature Page to Stockholders Agreement]

SCHEDULE OF DIRECTORS

Name	Class of Director
Lisa Harper	I
Stefan L. Kaluzny	I
Elizabeth Muñoz	II
Theophlius Killion	II
Dary Kopelioff	III
Vacant	III

Exhibit 10.10

TORRID HOLDINGS INC.
REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is made as of , 2021 among Torrid Holdings Inc., a Delaware corporation (the "Company"), each investor listed on the signature pages hereto under the caption "Sponsor Investors" (collectively, the "Sponsor Investors"), each Person listed on the signature pages under the caption "Other Investors" or who executes a Joinder as an "Other Investor" (collectively, the "Other Investors") and each of the executives listed on the signature pages under the caption "Executives" or who executes a Joinder as an "Executive" (collectively, the "Executives"). Except as otherwise specified herein, all capitalized terms used in this Agreement are defined in Exhibit A attached hereto.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Section 1 Demand Registrations.

(a) Requests for Registration. At any time and from time to time, the holders of the majority of the Sponsor Investor Registrable Securities may request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-1 or any similar long-form registration statement ("Long-Form Registrations") or on Form S-3 or any similar short-form registration statement ("Short-Form Registrations"), if available (any such requested registration, a "Demand Registration"). The Sponsor Investor may request that any Demand Registration be made pursuant to Rule 415 under the Securities Act (a "Shelf Registration") and (if the Company is a WKSI at the time any such request is submitted to the Company or will become one by the time of the filing of such Shelf Registration) that such Shelf Registration be an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) (an "Automatic Shelf Registration Statement"). Each request for a Demand Registration must specify the approximate number or dollar value of Registrable Securities requested to be registered by the requesting Holders and (if known) the intended method of distribution. The holders of a majority of the Sponsor Investor Registrable Securities will be entitled to request an unlimited number of Demand Registrations for which the Company will pay all Registration Expenses, whether or not any such registration is consummated.

(b) Notice to Other Holders. Within four (4) Business days after receipt of any such request, the Company will give written notice of the Demand Registration to all other Holders and, subject to the terms of Section 1(e), will include in such Demand Registration (and in all related registrations and qualifications under state blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the receipt of the Company's notice; provided that, with the written consent of the holders of a majority of the Sponsor Investor Registrable Securities, the Company may, or at the written request of the Sponsor Investors, the Company shall, instead provide notice of the Demand Registration to all other Holders within three (3) Business Days following the non-confidential filing of the registration statement with respect to the Demand Registration so long as such registration statement is not an Automatic Shelf Registration Statement.

(c) Form of Registrations. All Long-Form Registrations will be underwritten registrations unless otherwise approved by the Sponsor Investor. Demand Registrations will be Short-Form Registrations whenever the Company is permitted to use any applicable short form unless otherwise requested by the Sponsor Investor.

(d) Shelf Registrations.

(i) For so long as a registration statement for a Shelf Registration (a "Shelf Registration Statement") is and remains effective, the holders of a majority of the Sponsor Investor Registrable Securities will have the right at any time or from time to time to elect to sell pursuant to an offering (including an underwritten offering) Registrable Securities pursuant to such registration statement ("Shelf Registrable Securities"). If the holders of a majority of the Sponsor Investor Registrable Securities desire to sell Registrable Securities pursuant to an underwritten offering, then the holders of a majority of the Sponsor Investor Registrable Securities may deliver to the Company a written notice (a "Shelf Offering Notice") specifying the number of Shelf Registrable Securities that the Sponsor Investors desire to sell pursuant to such underwritten offering (the "Shelf Offering"). As promptly as practicable, but in no event later than two Business Days after receipt of a Shelf Offering Notice, the Company will give written notice of such Shelf Offering Notice to all other Holders of Shelf Registrable Securities that have been identified as selling stockholders in such Shelf Registration Statement and are otherwise permitted to sell in such Shelf Offering, which such notice shall request that each such Holder specify, within seven (7) days after the Company's receipt of the Shelf Offering Notice, the maximum number of Shelf Registrable Securities such Holder desires to be disposed of in such Shelf Offering. The Company, subject to Section 1(e) and Section 7, will include in such Shelf Offering all Shelf Registrable Securities with respect to which the Company has received timely written requests for inclusion. The Company will, as expeditiously as possible (and in any event within fourteen (14) days after the receipt of a Shelf Offering Notice), but subject to Section 1(e), use its best efforts to consummate such Shelf Offering.

(ii) If the holders of a majority of the Sponsor Investor Registrable Securities desire to engage in an underwritten block trade or bought deal pursuant to a Shelf Registration Statement (either through filing an Automatic Shelf Registration Statement or through a take-down from an already existing Shelf Registration Statement) (each, an "Underwritten Block Trade"), then notwithstanding the time periods set forth in Section 1(d)(i), then the holders of a majority of the Sponsor Investor Registrable Securities may notify the Company of the Underwritten Block Trade not less than two (2) Business Days prior to the day such offering is first anticipated to commence. If requested by the holders of a majority of the Sponsor Investor Registrable Securities, the Company will promptly notify other Holders of such Underwritten Block Trade and such notified Holders (each, a "Potential Participant") may elect whether or not to participate no later than the next Business Day (*i.e.* one (1) Business Day prior to the day such offering is to commence) (unless a longer period is agreed to by the Sponsor Investor), and the Company will as promptly as reasonably practicable use its best efforts to facilitate such Underwritten Block Trade (which may close as early as two Business Days after the date it commences); provided further that, notwithstanding the provisions of Section 1(d)(i), no Holder

(other than Holders of Sponsor Investor Registrable Securities) will be permitted to participate in an Underwritten Block Trade without the written consent of the Sponsor Investor. Any Potential Participant's request to participate in an Underwritten Block Trade shall be binding on the Potential Participant.

(iii) All determinations as to whether to complete any Shelf Offering and as to the timing, manner, price and other terms of any Shelf Offering contemplated by this Section 1(d) shall be determined by the Sponsor Investors, and the Company shall use its best efforts to cause any Shelf Offering to occur in accordance with such determinations as promptly as practicable.

(iv) The Company will, at the request of the Sponsor Investor, file any prospectus supplement or any post-effective amendments and otherwise take any action necessary to include therein all disclosure and language deemed necessary or advisable by the Sponsor Investor to effect such Shelf Offering.

(v) Subject to the terms of Section 1(f), the Company will use best efforts to keep the Shelf Registration Statement continuously effective until the date on which all Registrable Securities covered by the Shelf Registration Statement have been sold thereunder in accordance with the plan and method of distribution disclosed in the prospectus included in the Shelf Registration Statement, or otherwise (the "Shelf Period"). Subject to Section 1(f), the Company shall not be deemed to have used its best efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in Holders of Registrable Securities covered thereby not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

(e) Priority on Demand Registrations and Shelf Offerings. The Company will not include in any Demand Registration any securities which are not Registrable Securities without the prior written consent of the Sponsor Investor. If a Demand Registration or a Shelf Offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and (if permitted hereunder) other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities (if any), which can be sold therein without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, then the Company will include in such offering (prior to the inclusion of any securities which are not Registrable Securities) (i) first, the number of Sponsor Investor Registrable Securities requested to be included which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among the respective Participating Sponsor Investors on the basis of the number of Sponsor Investor Registrable Securities owned by each such Participating Sponsor Investor; and (ii) second, the number of Registrable Securities requested to be included by any other Holders which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders on the basis of the number of Registrable Securities owned by each such Holder. Notwithstanding anything to the contrary herein, if any Holders of Executive Registrable Securities have requested to include such securities in an underwritten offering and the managing underwriters for such offering advise the Company that in their opinion the inclusion of some or all of such Executive Registrable Securities could adversely affect the

marketability, proposed offering price, timing and/or method of distribution of the offering, then the Company shall exclude from such offering the number of such Executive Registrable Securities identified by the managing underwriters as having any such adverse effect prior to the exclusion of any Registrable Securities of any other Holders as set forth in this Section 1(e), which, for the avoidance of doubt, may be all such Executive Registrable Securities requested to be included such offering.

(f) Restrictions on Demand Registration and Shelf Offerings.

(i) The Company may postpone, for up to 180 days (or with the consent of the holders of a majority of Sponsor Investor Registrable Securities, a longer period) from the date of the request (the "Suspension Period"), the filing or the effectiveness of a registration statement for a Demand Registration or suspend the use of a prospectus that is part of a Shelf Registration Statement (and therefore suspend sales of the Shelf Registrable Securities) by providing written notice to the Holders if the following conditions are met: (A) the Company determines that the offer or sale of Registrable Securities would reasonably be expected to have a material adverse effect on any proposal or plan by the Company or any Subsidiary to engage in any material acquisition of assets or stock (other than in the ordinary course of business) or any material merger, consolidation, tender offer, recapitalization, reorganization, financing or other transaction involving the Company and (B) upon advice of counsel, the sale of Registrable Securities pursuant to the registration statement would require disclosure of material non-public information not otherwise required to be disclosed under applicable law, and either (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction, (y) disclosure would have a material adverse effect on the Company or the Company's ability to consummate such transaction, or (z) such transaction renders the Company unable to comply with SEC requirements, in each case under circumstances that would make it impractical or inadvisable to cause the registration statement (or such filings) to become effective or to promptly amend or supplement the registration statement on a post effective basis, as applicable. The Company may delay or suspend the effectiveness of a Demand Registration or Shelf Registration Statement pursuant to this Section 1(f)(i) only once in any twelve (12)-month period (for avoidance of doubt, in addition to the Company's rights and obligations under Section 4(a)(vi)) unless additional delays or suspensions are approved by the Sponsor Investor.

(ii) In the case of an event that causes the Company to suspend the use of a Shelf Registration Statement as set forth in Section 1(f)(i) above or pursuant to Section 4(a)(vi) (a "Suspension Event"), the Company will give a notice to the Holders whose Registrable Securities are registered pursuant to such Shelf Registration Statement (a "Suspension Notice") to suspend sales of the Registrable Securities and such notice must state generally the basis for the notice and that such suspension will continue only for so long as the Suspension Event or its effect is continuing. Each Holder agrees not to effect any sales of its Registrable Securities pursuant to such Shelf Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice. A Holder may recommence effecting sales of the Registrable Securities pursuant to the Shelf Registration Statement (or such filings) following further written notice to such effect (an "End of Suspension Notice") from the Company, which End of Suspension Notice will be given by the Company to the Holders promptly following the conclusion of any Suspension Event (and in any event during the permitted Suspension Period).

(g) Selection of Underwriters. The Sponsor Investor shall select the legal counsel to the Company, the investment banker(s) and manager(s) to administer any underwritten offering in connection with any Demand Registration or Shelf Offering.

(h) Distributions of Registrable Securities to Partners or Members. In the event the Sponsor Investor requests to participate in a registration pursuant to this Section 1 in connection with a distribution of Registrable Securities to its partners or members, the registration shall provide for resale by such partners or members, if requested by the Sponsor Investor.

(i) Other Registration Rights. Except as provided in this Agreement, the Company will not grant to any Person(s) the right to request the Company or any Subsidiary to register any equity securities of the Company or any Subsidiary, or any securities convertible or exchangeable into or exercisable for such securities, without the prior written consent of the Sponsor Investor; provided that, with the prior approval of the Sponsor Investor, the Company may grant rights to employees of the Company and its Subsidiaries to participate in Piggyback Registrations so long as they sign a Joinder as an "Executive" and Holder of "Executive Registrable Securities" hereunder.

(j) Revocation of Demand Notice or Shelf Offering Notice. At any time prior to the effective date of the registration statement relating to a Demand Registration or the "pricing" of any offering relating to a Shelf Offering Notice, the Sponsor Investors who initiated such Demand Registration or Shelf Offering may revoke or withdraw such notice of a Demand Registration or Shelf Offering Notice on behalf of all Holders participating in such Demand Registration or Shelf Offering without liability to such Holders (including, for the avoidance of doubt, the other Participating Sponsor Investor), in each case by providing written notice to the Company, and the Company shall immediately cease all efforts to secure effectiveness of such registration statement.

(k) Confidentiality. Each Holder agrees to treat as confidential the receipt of any notice hereunder (including notice of a Demand Registration, a Shelf Offering Notice and a Suspension Notice) and the information contained therein, and not to disclose or use the information contained in any such notice (or the existence thereof) without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally (other than as a result of disclosure by such Holder in breach of the terms of this Agreement).

Section 2 Piggyback Registrations.

(a) Right to Piggyback. Whenever the Company proposes to register any of its equity securities under the Securities Act (including primary and secondary registrations, and other than pursuant to an Excluded Registration) (a "Piggyback Registration"), the Company will give prompt written notice (and in any event within three Business Days after the public filing of the registration statement relating to the Piggyback Registration) to all Holders of its intention to effect such Piggyback Registration and, subject to the terms of Section 2(b) and Section 2(c), will include in such Piggyback Registration (and in all related registrations or qualifications under blue sky laws and in any related underwriting) all Registrable Securities with respect to

which the Company has received written requests for inclusion therein within ten (10) days after delivery of the Company's notice; provided that the Company shall not be required to provide such notice or include any Registrable Securities in such registration if the Sponsor Investors elect not to include any Sponsor Investor Registrable Securities in such registration, unless the Sponsor Investor otherwise consents in writing. Any Participating Sponsor Investor may withdraw its request for inclusion at any time prior to executing the underwriting agreement, or if none, prior to the applicable registration statement becoming effective.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration (i) first, the securities the Company proposes to sell, (ii) second, the Sponsor Investor Registrable Securities requested to be included in such registration which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among the respective Participating Sponsor Investors on the basis of the number of Sponsor Investor Registrable Securities owned by each such Participating Sponsor Investor, (iii) third, the Registrable Securities requested to be included in such registration by any other Holders which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect. Notwithstanding anything to the contrary herein, if any Holders of Executive Registrable Securities have requested to include such securities in a Piggyback Registration that is an underwritten primary offering on behalf of the Company and the managing underwriters for such offering advise the Company in writing that in their opinion the inclusion of some or all of such Executive Registrable Securities could adversely affect the marketability, proposed offering price, timing and/or method of distribution of the offering, the Company shall first exclude from such offering the number (which may be all) of such Executive Registrable Securities identified by the managing underwriters as having any such adverse effect prior to the exclusion of any securities in such offering.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders of the Company's equity securities (other than pursuant to Section 1 hereof), and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration (i) first, the securities requested to be included therein by the holders initially requesting such registration which, in the opinion of the underwriters, can be sold without any such adverse effect, (ii) second, the Sponsor Investor Registrable Securities requested to be included in such registration which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among the respective Participating Sponsor Investors on the basis of the number of Sponsor Investor Registrable Securities on the basis of the number of Registrable Securities owned by each such Participating Sponsor Investor, (iii) third, the Registrable Securities requested to be included in such registration by any other

Holders which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect. Notwithstanding anything to the contrary herein, if any Holders of Executive Registrable Securities have requested to include such securities in a Piggyback Registration that is an underwritten secondary offering and the managing underwriters for such offering advise the Company in writing that in their opinion the inclusion of some or all of such Executive Registrable Securities could adversely affect the marketability, proposed offering price, timing or method of distribution of the offering, the Company shall be permitted to first exclude from such offering the number (which may be all) of such Executive Registrable Securities identified by the managing underwriters as having any such adverse effect prior to the exclusion of any securities in such offering.

(d) Right to Terminate Registration. The Company will have the right to terminate or withdraw any registration initiated by it under this Section 2, whether or not any holder of Registrable Securities has elected to include securities in such registration; provided, that Holders may continue the registration as a Demand Registration pursuant to the terms of Section 1.

(e) Selection of Underwriters. If any Piggyback Registration is an underwritten offering, the Sponsor Investor shall select the legal counsel for the Company, the investment banker(s) and manager(s) for the offering.

Section 3 Stockholder Lock-Up Agreements and Company Holdback Agreement.

(a) Stockholder Lock-up Agreements. In connection with any underwritten Public Offering, each Holder will enter into any lock-up, holdback or similar agreements requested by the underwriter(s) managing such offering, in each case with such modifications and exceptions as may be approved by the Sponsor Investor. Without limiting the generality of the foregoing, each Holder hereby agrees that in connection with the initial Public Offering and in connection with any Demand Registration, Shelf Offering or Piggyback Registration that is an underwritten Public Offering, not to (i) offer, sell, contract to sell, pledge or otherwise dispose of (including sales pursuant to Rule 144), directly or indirectly, any equity securities of the Company (including equity securities of the Company that may be deemed to be beneficially owned by such Holder in accordance with the rules and regulations of the SEC) (collectively, "Securities"), or any securities, options or rights convertible into or exchangeable or exercisable for Securities (collectively, "Other Securities"), (ii) enter into a transaction which would have the same effect as described in clause (i) above, (iii) enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences or ownership of any Securities or Other Securities, whether such transaction is to be settled by delivery of such Securities or Other Securities, in cash or otherwise (each of (i), (ii) and (iii) above, a "Sale Transaction"), or (iv) publicly disclose the intention to enter into any Sale Transaction, commencing on the date on which the Company gives notice to the Holders that a preliminary prospectus has been circulated for such underwritten Public Offering or the "pricing" of such offering and continuing to the date that is (x) 180 days following the date of the final prospectus

for such underwritten Public Offering in the case of the initial Public Offering or (y) 90 days following the date of the final prospectus in the case of any other such underwritten Public Offering (each such period, or such shorter period as agreed to by the managing underwriters, a "Holdback Period"), in each case with such modifications and exceptions as may be approved by the Sponsor Investor; provided, however, that the foregoing restrictions shall not apply to (i) Securities acquired in the public market subsequent to the initial Public Offering, (ii) distributions-in-kind to a Holder's partners or members, (iii) transfers to Affiliates, but only if such Affiliates agree to be bound by the restrictions herein and (iv) the extent otherwise set forth in the lock-up, holdback or similar agreements requested by the underwriter(s) managing agreements signed by each Holder in connection with any underwritten Public Offering. The Company may impose stop-transfer instructions with respect to any Securities or Other Securities subject to the restrictions set forth in this Section 3(a) until the end of such Holdback Period.

(b) Company Holdback Agreement. The Company (i) will not file any registration statement for a Public Offering or cause any such registration statement to become effective, or effect any public sale or distribution of its Securities or Other Securities during any Holdback Period (other than as part of such underwritten Public Offering, or a registration on Form S-4 or Form S-8 or any successor or similar form which is (x) then in effect or (y) shall become effective upon the conversion, exchange or exercise of any then outstanding Other Securities) and (ii) will cause each holder of Securities and Other Securities (including each of its directors and executive officers) to agree not to effect any Sale Transaction during any Holdback Period, except as part of such underwritten registration (if otherwise permitted), unless approved in writing by the Sponsor Investor and the underwriters managing the Public Offering and to enter into any lock-up, holdback or similar agreements requested by the underwriter(s) managing such offering, in each case with such modifications and exceptions as may be approved by the Sponsor Investor.

Section 4 Registration Procedures.

(a) Company Obligations. Whenever the Holders have requested that any Registrable Securities be registered pursuant to this Agreement or have initiated a Shelf Offering, the Company will use its best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company will as expeditiously as possible:

(i) prepare and file with (or submit confidentially to) the SEC a registration statement, and all amendments and supplements thereto and related prospectuses, with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, all in accordance with the Securities Act and all applicable rules and regulations promulgated thereunder (provided that before filing or confidentially submitting a registration statement or prospectus or any amendments or supplements thereto, the Company will furnish to the counsel selected by the Sponsor Investor covered by such registration statement copies of all such documents proposed to be filed or submitted, which documents will be subject to the review and comment of such counsel);

(ii) notify each Holder of (A) the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose, (B) the receipt by the Company or its counsel of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (C) the effectiveness of each registration statement filed hereunder;

(iii) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period ending when all of the securities covered by such registration statement have been disposed of in accordance with the intended methods of distribution by the sellers thereof set forth in such registration statement (but not in any event before the expiration of any longer period required under the Securities Act or, if such registration statement relates to an underwritten Public Offering, such longer period as in the opinion of counsel for the underwriters a prospectus is required by law to be delivered in connection with sale of Registrable Securities by an underwriter or dealer) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iv) furnish, without charge, to each seller of Registrable Securities thereunder and each underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) (in each case including all exhibits and documents incorporated by reference therein), each amendment and supplement thereto, each Free Writing Prospectus and such other documents as such seller or underwriter, if any, may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller (the Company hereby consenting to the use in accordance with all applicable laws of each such registration statement, each such amendment and supplement thereto, and each such prospectus (or preliminary prospectus or supplement thereto) or Free Writing Prospectus by each such seller of Registrable Securities and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such registration statement or prospectus);

(v) use its best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph or (B) consent to general service of process in any such jurisdiction or (C) subject itself to taxation in any such jurisdiction);

(vi) notify in writing each seller of such Registrable Securities (A) promptly after it receives notice thereof, of the date and time when such registration statement and each post-effective amendment thereto has become effective or a prospectus or supplement to any prospectus relating to a registration statement has been filed and when any registration or qualification has become effective under a state securities or blue sky law or any exemption

thereunder has been obtained, (B) promptly after receipt thereof, of any request by the SEC for the amendment or supplementing of such registration statement or prospectus or for additional information, and (C) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event or of any information or circumstances as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, subject to Section 1(f), if required by applicable law or to the extent requested by the Sponsor Investor, the Company will use its best efforts to promptly prepare and file a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading and (D) if at any time the representations and warranties of the Company in any underwriting agreement, securities sale agreement, or other similar agreement, relating to the offering shall cease to be true and correct;

(vii) (A) use best efforts to cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, to be listed on a securities exchange and, without limiting the generality of the foregoing, to arrange for at least two market markers to register as such with respect to such Registrable Securities with FINRA, and (B) comply (and continue to comply) with the requirements of any self-regulatory organization applicable to the Company, including without limitation all corporate governance requirements;

(viii) use best efforts to provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(ix) enter into and perform such customary agreements (including, as applicable, underwriting agreements in customary form) and take all such other actions as the Sponsor Investor or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, making available the executive officers of the Company and participating in "road shows," investor presentations, marketing events and other selling efforts and effecting a stock or unit split or combination, recapitalization or reorganization);

(x) obtain for each selling Holder and any underwriter an opinion of counsel for the Company, covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such selling Holder and/or underwriters;

(xi) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition or sale pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate and business documents and properties of the Company, as will be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors, employees, agents, representatives and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement and the disposition of such Registrable Securities pursuant thereto;

(xii) take all actions to ensure that any Free-Writing Prospectus utilized in connection with any Demand Registration or Piggyback Registration or Shelf Offering hereunder complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, prospectus supplement and related documents, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(xiii) otherwise use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(xiv) permit any Holder which, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to allow such Holder to provide language for insertion therein, in form and substance satisfactory to the Company, which in the reasonable judgment of such Holder and its counsel should be included;

(xv) use its best efforts to (A) make Short-Form Registration available for the sale of Registrable Securities and (B) prevent the issuance of any stop order suspending the effectiveness of a registration statement, or the issuance of any order suspending or preventing the use of any related prospectus or suspending the qualification of any Common Equity included in such registration statement for sale in any jurisdiction use, and in the event any such order is issued, best efforts to obtain promptly the withdrawal of such order;

(xvi) use its best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(xvii) cooperate with the Holders covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement, or the removal of any restrictive legends associated with any account at which such securities are held, and enable such securities to be in such denominations and registered in such names as the managing underwriter, or agent, if any, or such Holders may request;

(xviii) have appropriate officers of the Company prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, take other

actions to obtain ratings for any Registrable Securities (if they are eligible to be rated) and otherwise use its best efforts to cooperate as reasonably requested by the selling Holders and the underwriters in the offering, marketing or selling of the Registrable Securities;

(xix) have appropriate officers of the Company, and cause representatives of the Company's independent registered public accountants, to participate in any due diligence discussions reasonably requested by any selling Holder or any underwriter;

(xx) if requested by any underwriter or the Sponsor Investor, agree, and cause the Company and any directors or officers of the Company to agree, to be bound by customary "lock-up" agreements restricting the ability to dispose of Company securities and file or cause the filing of any registration statement under the Securities Act;

(xxi) if requested by any managing underwriter, include in any prospectus or prospectus supplement updated financial or business information for the Company's most recent period or current quarterly period (including estimated results or ranges of results) if required for purposes of marketing the offering in the view of the managing underwriter;

(xxii) use reasonable best efforts to cooperate and assist in any filings required to be made with the FINRA and in the performance of any due diligence investigation by any underwriter that is required to be undertaken in accordance with the rules and regulations of FINRA;

(xxiii) otherwise use best efforts to cooperate as reasonably requested by the selling Holders and the underwriters in the offering, marketing or selling of the Registrable Securities;

(xxiv) otherwise use best efforts to comply with all applicable rules and regulations of the SEC and all reporting requirements under the rules and regulations of the Exchange Act;

(xxv) cause any officer of the Company to participate fully in the sale process in a manner customary for persons in like positions and consistent with his or her other duties with the Company, including the preparation of the registration statement and the preparation and presentation of any road shows and other investor meetings;

(xxvi) take no direct or indirect action prohibited by Regulation M under the Exchange Act; provided, however, that to the extent that any prohibition is applicable to the Company, the Company will take such action as is necessary to make any such prohibition inapplicable;

(xxvii) cooperate with each Holder covered by the registration statement and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with the preparation and filing of applications, notices, registrations and responses to requests for additional information with FINRA, the New York Stock Exchange, Nasdaq or any other national securities exchange on which the shares of Common Equity are or are to be listed, and (B) to the extent required by the rules and regulations of FINRA, retain a Qualified Independent Underwriter acceptable to the managing underwriter;

(xxviii) in the case of any underwritten offering, use its best efforts to obtain, and deliver to the underwriter(s), in the manner and to the extent provided for in the applicable underwriting agreement, one or more cold comfort letters from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters;

(xxix) use its best efforts to provide (A) a legal opinion of the Company's outside counsel, dated the effective date of such registration statement addressed to the Company, (B) on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a Demand Registration or Shelf Offering, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the closing date of the applicable sale, (1) one or more legal opinions of the Company's outside counsel, dated such date, in form and substance as customarily given to underwriters in an underwritten public offering or, in the case of a non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities and (2) one or more "negative assurances letters" of the Company's outside counsel, dated such date, in form and substance as is customarily given to underwriters in an underwritten public offering or, in the case of a non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities, in each case, addressed to the underwriters, if any, or, if requested, in the case of a non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities and (3) customary certificates executed by authorized officers of the Company as may be requested by any Holder or any underwriter of such Registrable Securities;

(xxx) if the Company files an Automatic Shelf Registration Statement covering any Registrable Securities, use its best efforts to remain a WKSI (and not become an ineligible issuer (as defined in Rule 405 under the Securities Act)) during the period during which such Automatic Shelf Registration Statement is required to remain effective;

(xxxi) if the Company does not pay the filing fee covering the Registrable Securities at the time an Automatic Shelf Registration Statement is filed, pay such fee at such time or times as the Registrable Securities are to be sold;

(xxxii) if the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year, refile a new Automatic Shelf Registration Statement covering the Registrable Securities, and, if at any time when the Company is required to re-evaluate its WKSI status the Company determines that it is not a WKSI, use its best efforts to refile the Shelf Registration Statement on Form S-3 and, if such form is not available, Form S-1 and keep such registration statement effective during the period during which such registration statement is required to be kept effective;

(xxxiii) if requested by any Participating Sponsor Investor, cooperate with such Participating Sponsor Investor and with the managing underwriter or agent, if any, on reasonable notice to facilitate any Charitable Gifting Event and to prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to permit any such recipient Charitable Organization to sell in the underwritten offering if it so elects; and

(xxxiv) use best efforts to take any action requested by the selling Holders, including any action described in clauses (i) through (xxxiii) above to prepare for and facilitate any "over-night deal" or other proposed sale of Registrable Securities over a limited timeframe.

(b) Officer Obligations. Each Holder that is an officer of the Company agrees that if and for so long as he or she is employed by the Company or any Subsidiary thereof, he or she will participate fully in the sale process in a manner customary for persons in like positions and consistent with his or her other duties with the Company, including the preparation of the registration statement and the preparation and presentation of any road shows.

(c) Automatic Shelf Registration Statements. If the Company files any Automatic Shelf Registration Statement for the benefit of the holders of any of its securities other than the Holders, and the Sponsor Investors do not request that their Registrable Securities be included in such Shelf Registration Statement, the Company agrees that, at the request of the Sponsor Investors, it will include in such Automatic Shelf Registration Statement such disclosures as may be required by Rule 430B in order to ensure that the Sponsor Investor may be added to such Shelf Registration Statement at a later time through the filing of a prospectus supplement rather than a post-effective amendment. If the Company has filed any Automatic Shelf Registration Statement for the benefit of the holders of any of its securities other than the Holders, the Company shall, at the request of the Sponsor Investor, file any post-effective amendments necessary to include therein all disclosure and language necessary to ensure that the holders of Registrable Securities may be added to such Shelf Registration Statement.

(d) Additional Information. The Company may require each seller of Registrable Securities as to which any registration is being effected to furnish the Company such information regarding such seller and the distribution of such securities as the Company may from time to time reasonably request in writing, as a condition to such seller's participation in such registration.

(e) In-Kind Distributions. If any Sponsor Investor (and/or any of their Affiliates) seeks to effectuate an in-kind distribution of all or part of their Registrable Securities to their respective direct or indirect equityholders, the Company will, subject to applicable lock-up, holdback or similar agreements pursuant to Section 3(a), reasonably cooperate with and assist the Sponsor Investors (and/or any of their Affiliates), such equityholders and the Company's transfer agent to facilitate such in-kind distribution in the manner reasonably requested by the Sponsor Investors (including the delivery of instruction letters by the Company or its counsel to the Company's transfer agent and the delivery of Registrable Securities without restrictive legends, to the extent no longer applicable).

(f) Suspended Distributions. Each Person participating in a registration hereunder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(a)(vi), such Person will immediately discontinue the disposition of its Registrable Securities pursuant to the registration statement until such Person's receipt of the copies of a supplemented or amended prospectus as contemplated by Section 4(a)(vi), subject to the Company's compliance with its obligations under Section 4(a)(vi).

(g) Other. To the extent that any of the Participating Sponsor Investors is or may be deemed to be an "underwriter" of Registrable Securities pursuant to any SEC comments or policies, the Company agrees that (i) the indemnification and contribution provisions contained in Section 6 shall be applicable to the benefit of such Participating Sponsor Investor in its role as an underwriter or deemed underwriter in addition to their capacity as a holder and (ii) such Participating Sponsor Investor shall be entitled to conduct the due diligence which they would normally conduct in connection with an offering of securities registered under the Securities Act, including without limitation receipt of customary opinions and comfort letters addressed to such Participating Sponsor Investor.

Section 5 Registration Expenses.

Except as expressly provided herein, all out-of-pocket expenses incurred by the Company or any Sponsor Investor in connection with the performance of or compliance with this Agreement and/or in connection with any Demand Registration, Piggyback Registration or Shelf Offering, whether or not the same shall become effective, shall be paid by the Company, including, without limitation: (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA, (ii) all fees and expenses in connection with compliance with any securities or "blue sky" laws, (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company or other depositary and of printing prospectuses and Company Free Writing Prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants of the Company (including the expenses of any special audit and cold comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed (or on which exchange the Registrable Securities are proposed to be listed in the case of the initial Public Offering), (vii) all applicable rating agency fees with respect to the Registrable Securities, (viii) all fees and disbursements of legal counsel for the Company, (ix) all reasonable fees and disbursements of one legal counsel for selling Holders selected by the Sponsor Investors (which may be the same counsel as selected for the Company) together with any necessary local counsel as may be required by the Sponsor Investors, (x) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (xi) all fees and expenses of any special experts or other Persons retained by the Company or the Sponsor Investors in connection with any Registration (xii) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xiii) all expenses related to the "road-show" for any underwritten offering, including all travel, meals and lodging. All such expenses are referred to herein as "Registration Expenses." The Company shall not be required to pay, and each Person that sells securities pursuant to a Demand Registration, Shelf Offering or Piggyback Registration hereunder will bear and pay, all underwriting discounts and commissions applicable to the Registrable Securities sold for such Person's account and all transfer taxes (if any) attributable to the sale of Registrable Securities.

Section 6 Indemnification and Contribution.

(a) By the Company. The Company will indemnify and hold harmless, to the fullest extent permitted by law and without limitation as to time, each Holder, such Holder's officers, directors employees, agents, fiduciaries, stockholders, managers, partners, members, affiliates, direct and indirect equityholders, consultants and representatives, and any successors and assigns thereof, and each Person who controls such holder (within the meaning of the Securities Act) (the "Indemnified Parties") against all losses, claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) (collectively, "Losses") caused by, resulting from, arising out of, based upon or related to any of the following (each, a "Violation") by the Company: (i) any untrue or alleged untrue statement of material fact contained in (A) any registration statement, prospectus, preliminary prospectus or Free-Writing Prospectus, or any amendment thereof or supplement thereto or (B) any application or other document or communication (in this Section 6, collectively called an "application") executed by or on behalf of the Company or based upon written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify any securities covered by such registration under the "blue sky" or securities laws thereof, (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance. In addition, the Company will reimburse such Indemnified Party for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such Losses. Notwithstanding the foregoing, the Company will not be liable in any such case to the extent that any such Losses result from, arise out of, are based upon, or relate to an untrue statement, or omission, made in such registration statement, any such prospectus, preliminary prospectus or Free-Writing Prospectus or any amendment or supplement thereto, or in any application, in reliance upon, and in conformity with, written information prepared and furnished in writing to the Company by such Indemnified Party expressly for use therein or by such Indemnified Party's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Indemnified Party with a sufficient number of copies of the same. In connection with an underwritten offering, the Company will indemnify such underwriters, their officers and directors, and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Indemnified Parties or as otherwise agreed to in the underwriting agreement executed in connection with such underwritten offering. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of such securities by such seller.

(b) By Holders. In connection with any registration statement in which a Holder is participating, each such Holder will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company, its officers, directors, employees, agents and representatives, and each Person who controls the Company (within the meaning of the Securities Act) against any Losses resulting from (as determined by a final and appealable judgment, order or decree of a court of competent

jurisdiction) any untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such Holder expressly for use therein; provided that the obligation to indemnify will be individual, not joint and several, for each Holder and will be limited to the net amount of proceeds received by such Holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Claim Procedure. Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice will impair any Person's right to indemnification hereunder only to the extent such failure has prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. In such instance, the conflicted indemnified parties will have a right to retain one separate counsel, chosen by the majority of the conflicted indemnified parties involved in the indemnification and approved by the Sponsor Investor, at the expense of the indemnifying party.

(d) Contribution. If the indemnification provided for in this Section 6 is held by a court of competent jurisdiction to be unavailable to, or is insufficient to hold harmless, an indemnified party or is otherwise unenforceable with respect to any Loss referred to herein, then such indemnifying party will contribute to the amounts paid or payable by such indemnified party as a result of such Loss, (i) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such Loss as well as any other relevant equitable considerations or (ii) if the allocation provided by clause (i) of this Section 6(d) is not permitted by applicable law, then in such proportion as is appropriate to reflect not only such relative fault but also the relative benefit of the Company on the one hand and of the sellers of Registrable Securities and any other sellers participating in the registration statement on the other in connection with the statement or omissions which resulted in such Losses, as well as any other relevant equitable considerations; provided that the maximum amount of liability in respect of such contribution will be limited, in the case of each seller of Registrable Securities, to an amount equal to the net proceeds actually received by such seller from the sale of Registrable Securities effected pursuant to such registration. The relative fault of the indemnifying party and of the indemnified party will be determined by reference to, among other things, whether the untrue (or, as applicable alleged) untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified

party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if the contribution pursuant to this Section 6(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account such equitable considerations. The amount paid or payable by an indemnified party as a result of the Losses referred to herein will be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Release. No indemnifying party will, except with the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(f) Non-exclusive Remedy; Survival. The indemnification and contribution provided for under this Agreement will be in addition to any other rights to indemnification or contribution that any indemnified party may have pursuant to law or contract (and the Company and its Subsidiaries shall be considered the indemnitors of first resort in all such circumstances to which this Section 6 applies) and will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and will survive the transfer of Registrable Securities and the termination or expiration of this Agreement.

Section 7 Cooperation with Underwritten Offerings. No Person may participate in any underwritten registration hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements (including, without limitation, pursuant to the terms of any over-allotment or "green shoe" option requested by the underwriters; provided that no Holder will be required to sell more than the number of Registrable Securities such Holder has requested to include in such registration) and (ii) completes, executes and delivers all questionnaires, powers of attorney, stock powers, custody agreements, indemnities, underwriting agreements and other documents and agreements required under the terms of such underwriting arrangements or as may be reasonably requested by the Company and the lead managing underwriter(s). To the extent that any such agreement is entered into pursuant to, and consistent with, Section 3, Section 4 and/or this Section 7, the respective rights and obligations created under such agreement will supersede the respective rights and obligations of the Holders, the Company and the underwriters created thereby with respect to such registration.

Section 8 Subsidiary Public Offering. If, after an initial Public Offering of the common equity securities of one of its Subsidiaries, the Company distributes securities of such Subsidiary to its equityholders, then the rights and obligations of the Company pursuant to this Agreement will apply, *mutatis mutandis*, to such Subsidiary, and the Company will cause such Subsidiary to comply with such Subsidiary's obligations under this Agreement as if it were the Company hereunder.

Section 9 Rules 144 and 144A and Regulation S. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the reasonable request of the Sponsor Investor, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time), and it will take such further action as the Sponsor Investor may reasonably request, all to the extent required from time to time to enable the Sponsor Investor to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Holder, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

Section 10 Trading Windows. The Company shall (i) use its reasonable best efforts to notify the Sponsor Investor of each "closing" and "opening" date under the trading windows established by the Company's insider trading policy, in each case, at least two Business Days prior to each such date and (ii), at the request of the Sponsor Investor, confirm to the Sponsor Investor whether a trading window is open at such time.

Section 11 Joinder; Additional Parties.

(a) Joinder. The Company may from time to time (with the prior written consent of the Sponsor Investor) permit any Person who acquires Common Equity (or rights to acquire Common Equity) to become a party to this Agreement and to be entitled to and be bound by all of the rights and obligations as a Holder by obtaining an executed joinder to this Agreement from such Person in the form of Exhibit B attached hereto (a "Joinder"). Upon the execution and delivery of a Joinder by such Person, the Common Equity held by such Person shall become the category of Registrable Securities (i.e., Sponsor Investor Registrable Securities, Other Investor Registrable Securities or Executive Registrable Securities), and such Person shall be deemed the category of Holder (i.e., Sponsor Investor, Other Investor or Executive), in each case as set forth on the signature page to such Joinder.

(b) Legend. Each certificate (if any) evidencing any Registrable Securities and each certificate issued in exchange for or upon the transfer of any Registrable Securities (unless such Registrable Securities would no longer be Registrable Securities after such transfer) will be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT DATED AS OF , 2021 AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY") AND CERTAIN OF THE COMPANY'S EQUITYHOLDERS, AS AMENDED. A COPY OF SUCH AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

The Company will imprint such legend on certificates evidencing Registrable Securities outstanding prior to the date hereof. The legend set forth above will be removed from the certificates evidencing any securities that have ceased to be Registrable Securities.

Section 12 General Provisions.

(a) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Company and the Sponsor Investor; provided that no such amendment, modification or waiver that would treat a specific Holder or group of Holders of Registrable Securities (i.e., Sponsor Investors, Other Investors or Executives) in a manner materially and adversely different than any other Holder or group of Holders will be effective against such Holder or group of Holders without the consent of the holders of a majority of the Registrable Securities that are held by the group of Holders that is materially and adversely affected thereby. The failure or delay of any Person to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such Person thereafter to enforce each and every provision of this Agreement in accordance with its terms. A waiver or consent to or of any breach or default by any Person in the performance by that Person of his, her or its obligations under this Agreement will not be deemed to be a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person under this Agreement.

(b) Remedies. The parties to this Agreement will be entitled to enforce their rights under this Agreement specifically (without posting a bond or other security), to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that a breach of this Agreement would cause irreparable harm and money damages would not be an adequate remedy for any such breach and that, in addition to any other rights and remedies existing hereunder, any party will be entitled to specific performance and/or other injunctive relief from any court of law or equity of competent jurisdiction (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement.

(c) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited, invalid, illegal or unenforceable in any respect and to any extent under any applicable law or regulation in any jurisdiction, (i) the application of that provision to another Person or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by law and (ii) such prohibition, invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction or in any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such prohibited, invalid, illegal or unenforceable provision had never been contained herein.

(d) Entire Agreement. Except as otherwise provided herein, this Agreement contains the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

(e) Successors and Assigns. Except as otherwise provided herein, this Agreement will bind and inure to the benefit and be enforceable by the Company and its successors and permitted assigns and the Holders and their respective successors and permitted assigns (whether so expressed or not).

(f) Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by electronic mail or facsimile if sent during normal business hours of the recipient; but if not, then on the next Business Day, (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications will be sent to the Company at the address specified below or any Joinder and to any holder, or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any party may change such party's address for receipt of notice by giving prior written notice of the change to the sending party as provided herein. The Company's address is:

Torrid Holdings Inc.
18501 East San Jose Avenue
City of Industry, California 91748
Attn: Brian Park, Secretary
Facsimile: [●]
Email: [●]

With a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Joshua N. Korff, P.C., Michael Kim, P.C., and Aslam A. Rawoof
Michael Kim, P.C.
Facsimile: (212) 446-4900
Email: joshua.korff@kirkland.com, michael.kim@kirkland.com and
aslam.rawoof@kirkland.com

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

(g) Business Days. If any time period for giving notice or taking action hereunder expires on a day that is not a Business Day, the time period will automatically be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(h) Governing Law. The corporate law of the State of Delaware will govern all issues and questions concerning the relative rights of the Company and its equityholders. All

other issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto will be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(i) MUTUAL WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

(j) CONSENT TO JURISDICTION AND SERVICE OF PROCESS. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH PARTY'S RESPECTIVE ADDRESS SET FORTH ABOVE WILL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(k) No Recourse. Notwithstanding anything to the contrary in this Agreement, the Company and each Holder agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement, will be had against any current or future director, officer, employee, general or limited partner or member of any Holder or any Affiliate or assignee thereof, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever will attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Holder or any current or future member of any Holder or any current or future director, officer, employee, partner or member of any Holder or of any Affiliate or assignee thereof, as such for any obligation of any Holder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

(l) Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The use of the word "including" in this Agreement will be by way of example rather than by limitation.

(m) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party.

(n) Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together will constitute one and the same agreement.

(o) Electronic Delivery. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent executed and delivered by means of a photographic, photostatic, facsimile or similar reproduction of such signed writing using a facsimile machine or electronic mail will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic mail as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(p) Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Holder agrees to execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

(q) Dividends, Recapitalizations, Etc. If at any time or from time to time there is any change in the capital structure of the Company by way of a stock split, stock dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment will be made in the provisions hereof so that the rights and privileges granted hereby will continue.

(r) No Third-Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except as otherwise expressly provided herein.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

TORRID HOLDINGS INC.

By: _____

Its: _____

[Signature Page to Registration Rights Agreement]

SPONSOR INVESTOR:

SYCAMORE PARTNERS TORRID, L.L.C.

By: _____

Its: _____

Address: _____

_____

_____

[Signature Page to Registration Rights Agreement]

OTHER INVESTORS:

Name:

Address:

[Signature Page to Registration Rights Agreement]

EXECUTIVES:

Name:

Address:

Name:

Address:

Name:

Address:

[Signature Page to Registration Rights Agreement]

EXHIBIT A

DEFINITIONS

"Affiliate" of any Person means any other Person controlled by, controlling or under common control with such Person and, in the case of an individual, also includes any member of such individual's Family Group; provided that the Company and its Subsidiaries will not be deemed to be Affiliates of any holder of Registrable Securities. As used in this definition, "control" (including, with its correlative meanings, "controlling," "controlled by" and "under common control with") will mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

"Agreement" has the meaning set forth in the recitals.

"Automatic Shelf Registration Statement" has the meaning set forth in Section 1(a).

"Business Day" means a day that is not a Saturday or Sunday or a day on which banks in New York City or the City of Industry, California, are authorized or requested by law to close.

"Charitable Gifting Event" means any transfer by a Sponsor Investor, or any subsequent transfer by such holder's members, partners or other employees, in connection with a bona fide gift to any Charitable Organization on the date of, but prior to, the execution of the underwriting agreement entered into in connection with any underwritten offering.

"Charitable Organization" means a charitable organization as described by Section 501(c)(3) of the Internal Revenue Code of 1986, as in effect from time to time.

"Common Equity" means the Company's shares of common stock, par value $0.01 per share.

"Company" has the meaning set forth in the preamble and shall include its successor(s).

"Demand Registrations" has the meaning set forth in Section 1(a).

"End of Suspension Notice" has the meaning set forth in Section 1(f)(ii).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

"Excluded Registration" means any registration (i) pursuant to a Demand Registration (which is addressed in Section 1(a)), or (ii) in connection with registrations on Form S-4 or S-8 promulgated by the SEC or any successor or similar forms).

"Executives" has the meaning set forth in the recitals.

"Executive Registrable Securities" means, irrespective of which Person actually holds such securities, any Common Equity held by the management employees of the Company who are listed as "Executives" on the signature page hereto or to a Joinder.

"Family Group" means with respect to any individual, such individual's current or former spouse, their respective parents, descendants of such parents (whether natural or adopted) and the spouses of such descendants, any trust, limited partnership, corporation or limited liability company established solely for the benefit of such individual or such individual's current or former spouse, their respective parents, descendants of such parents (whether natural or adopted) or the spouses of such descendants.

"FINRA" means the Financial Industry Regulatory Authority.

"Free Writing Prospectus" means a free-writing prospectus, as defined in Rule 405.

"Holdback Period" has the meaning set forth in Section 3(a).

"Holder" means a holder of Registrable Securities who is a party to this Agreement (including by way of Joinder).

"Indemnified Parties" has the meaning set forth in Section 6(a).

"Inspectors" has the meaning set forth in Section 4(a)(xi).

"Joinder" has the meaning set forth in Section 9(a).

"Long-Form Registrations" has the meaning set forth in Section 1(a).

"Losses" has the meaning set forth in Section 6(c).

"Other Investors" has the meaning set forth in the recitals.

"Other Investor Registrable Securities" means, irrespective of which Person actually holds such securities, (i) any Common Equity held (directly or indirectly) by any Other Investors or any of their Affiliates, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Participating Sponsor Investors" means any Sponsor Investor(s) participating in the request for a Demand Registration, Shelf Offering, Piggyback Registration or Underwritten Block Trade.

"Permitted Transferee" means any transferee pursuant to a transfer of Common Equity (i) by any Holder to or among such Holder's Family Group (including, without limitation,

for estate planning purposes) or pursuant to applicable laws of descent and distribution, provided that (x) Common Equity may not be transferred to a Holder's spouse in connection with a divorce proceeding and (y) any Holder that is a trust or estate planning vehicle or entity must remain for the benefit of the same person(s) for so long as such trust holds Common Equity or (ii) in the case of the Sponsor Investor, to any of its Affiliates (other than the Company or any of its Subsidiaries) or limited partners.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Piggyback Registrations" has the meaning set forth in Section 2(a).

"Preemption Notice" has the meaning set forth in Section 1(i).

"Public Offering" means any sale or distribution by the Company, one of its Subsidiaries and/or Holders to the public of Common Equity or other securities convertible into or exchangeable for Common Equity pursuant to an offering registered under the Securities Act.

"Registrable Securities" means Sponsor Investor Registrable Securities, Other Investor Registrable Securities and Executive Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they have been (a) sold or distributed pursuant to a Public Offering, (b) sold in compliance with Rule 144 following the consummation of the initial Public Offering, (c) distributed to the direct or indirect partners or members of a Sponsor Investor or (d) repurchased by the Company or a Subsidiary of the Company. For purposes of this Agreement, a Person will be deemed to be a holder of Registrable Securities, and the Registrable Securities will be deemed to be in existence, whenever such Person has the right to acquire, directly or indirectly, such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected, and such Person will be entitled to exercise the rights of a holder of Registrable Securities hereunder (it being understood that a holder of Registrable Securities may only request that Registrable Securities in the form of Common Equity be registered pursuant to this Agreement). Notwithstanding the foregoing, following the consummation of an initial Public Offering, any Registrable Securities held by any Person (other than any Sponsor Investor or its Affiliates) that may be sold under Rule 144(b)(1)(i) without limitation under any of the other requirements of Rule 144 will be deemed not to be Registrable Securities.

"Registration Expenses" has the meaning set forth in Section 5.

"Repurchase Rights" means the right of the Company, the Sponsor Investor and/or any designee thereof to repurchase Common Equity from any director, officer, employee, other service provider or consultant of the Company and/or its Subsidiaries upon the termination of such Person's employment or engagement with the Company and/or its Subsidiaries or other event pursuant to an agreement approved by the board of directors of the Company between the Company and such Person.

"Rule 144", "Rule 144A", "Rule 158", "Rule 405", "Rule 415", "Rule 403B", "Rule 462" and "Regulation S" mean, in each case, such rule promulgated under the Securities Act (or any successor provision) by the SEC, as the same will be amended from time to time, or any successor rule then in force.

"Sale of the Company" means any transaction or series of transactions pursuant to which any Person(s) or a group of related Persons (other than any Sponsor Investor and/or its Affiliates) in the aggregate acquires: (i) Common Equity of the Company entitled to vote (other than voting rights accruing only in the event of a default, breach, event of noncompliance or other contingency) to elect directors with a majority of the voting power of the Company's board of directors (whether by merger, consolidation, reorganization, combination, sale or transfer of the Company's Common Equity) or (ii) all or substantially all of the Company's and its Subsidiaries' assets determined on a consolidated basis; provided that a Public Offering will not constitute a Sale of the Company.

"Sale Transaction" has the meaning set forth in Section 3(a).

"SEC" means the United States Securities and Exchange Commission.

"Securities" has the meaning set forth in Section 3(a).

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

"Shelf Offering" has the meaning set forth in Section 1(d)(i).

"Shelf Offering Notice" has the meaning set forth in Section 1(d)(i).

"Shelf Period" has the meaning set forth in Section 1(d)(v).

"Shelf Registration" has the meaning set forth in Section 1(a).

"Shelf Registrable Securities" has the meaning set forth in Section 1(d)(i).

"Shelf Registration Statement" has the meaning set forth in Section 1(d).

"Short-Form Registrations" has the meaning set forth in Section 1(a).

"Sponsor Investor" has the meaning set forth in the recitals; provided that any decision to be made under this Agreement by the Sponsor Investor shall be made by the holders of a majority of all Sponsor Investor Registrable Securities.

"Sponsor Investor Registrable Securities" means, irrespective of which Person actually holds such securities, (i) any Common Equity held (directly or indirectly) by any

Sponsor Investor or any of its Affiliates or Permitted Transferees, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Subsidiary" means, with respect to the Company, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more of the other Subsidiaries of the Company or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the limited liability company, partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more Subsidiaries of the Company or a combination thereof. For purposes hereof, a Person or Persons will be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons will be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or will be or control the managing director or general partner of such limited liability company, partnership, association or other business entity.

"Suspension Event" has the meaning set forth in Section 1(f)(ii).

"Suspension Notice" has the meaning set forth in Section 1(f)(ii).

"Suspension Period" has the meaning set forth in Section 1(f)(i).

"Violation" has the meaning set forth in Section 6(a).

"WKSI" means a "well-known seasoned issuer" as defined under Rule 405.

EXHIBIT B

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement dated as of , 2021 (as amended, modified and waived from time to time, the "Registration Agreement"), among Torrid Holdings Inc., a Delaware corporation (the "Company"), and the other persons named as parties therein (including pursuant to other Joinders). Capitalized terms used herein have the meaning set forth in the Registration Agreement.

By executing and delivering this Joinder to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of, the Registration Agreement as a Holder in the same manner as if the undersigned were an original signatory to the Registration Agreement, and the undersigned will be deemed for all purposes to be a Holder, an Other Investor thereunder and the undersigned's shares of Common Equity will be deemed for all purposes to be Other Investor Registrable Securities under the Registration Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the day of , 2021.

_____
Signature

_____
Print Name

Address: _____

_____

_____

Agreed and Accepted as of

, 2021:

TORRID HOLDINGS INC.

By: _____

Its: _____

Exhibit 10.11

EXECUTION VERSION

PERSONAL AND CONFIDENTIAL

December 13, 2019

Ms. Elizabeth Muñoz-Guzman

Re: Employment Agreement

Dear Ms. Muñoz-Guzman:

In order to memorialize your position as Chief Executive Officer of Torrid LLC, a California limited liability company (the "Company") (it being acknowledged that you have served as Chief Executive Officer of the Company since August 28, 2018), the Company and you are entering into this employment agreement (the "Agreement") effective as of December 13, 2019 (the "Effective Date"). As Chief Executive Officer, you will report directly to the Board (as defined below). Your duties as Chief Executive Officer will involve such duties as are normally associated with such position and such other matters related to the day-to-day executive management of the Company, consistent with your position as Chief Executive Officer, as delegated to you by the Board. Your principal place of business will be at the Company's office located in City of Industry, California, it being agreed and understood that you will engage in business travel to the extent necessary or desirable for the performance of your duties as the Company's Chief Executive Officer. For purposes hereof, "Parent Group" means, collectively, Sycamore Partners Torrid L.L.C., a Delaware limited liability company ("Parent"), and each of its subsidiaries (including the Company). Any references to the "members of the Parent Group" and similar phrases shall be deemed to refer to Parent and its subsidiaries (including the Company). For purposes hereof, "Board" shall mean (i) during any such period in which Torrid Intermediate LLC, a Delaware limited liability company, is the managing member of the Company and the Company shall not have a board of directors or board of managers, the board of managers of Torrid Intermediate LLC, and (ii) otherwise, the board of directors or board of managers or other similar governing body, as applicable, of the Company.

The specific terms of your employment are as follows:

1. Annual Base Salary. During the Term (as defined in Section 7 below), your annual base salary will be $900,000 ("Base Salary"), to be paid in regular installments in accordance with the Company's general payroll practices for other executives of the Company. The Board will review your Base Salary on an annual basis for potential increase thereto. All amounts payable to you pursuant to this Agreement shall be subject to any required withholding under applicable law.

2. Annual Bonus. For FY 2019 and each fiscal year thereafter during the Term, you will be eligible to earn an annual bonus in an amount of 125% of your Base Salary, upon the achievement of annual plan goals (the "Target Bonus"). Your annual plan performance targets will be recommended by the management of the Company and established annually (in consultation with you) prior to the start of each fiscal year (which targets will generally focus on financial metrics of the Company in comparison to budget). If you are employed on the last day of the applicable fiscal year, you shall be entitled to payment of the full earned bonus amount for such fiscal year, determined based on the level of achievement of the applicable performance targets.

Any bonus earned under this Section 2 shall be paid as soon as practicable and within forty-five (45) days following the completion of Parent's audit for the fiscal year during which such bonus was earned under this Section 2, but in any event by December 31st immediately following the completion of such fiscal year.

3. Certain Matters Upon an IPO.

(a) If an IPO occurs during your employment hereunder, then you will be entitled to a one-time grant of restricted stock units or restricted share awards (the "IPO Stock Award") in respect of such number of shares of common stock of the IPO Issuer as is equal to $1.5 million divided by the initial public offering price per share of common stock of the IPO Issuer offered to the public in the IPO. The IPO Stock Award will be granted as soon as reasonably practicable following the date of the IPO (the "IPO Date"). The IPO Stock Award (i) shall vest as to (x) 50% of the shares of common stock subject to the IPO Stock Award as of the date of grant and (y) 50% of the shares of common stock subject to the IPO Stock Award in equal installments on each of the first, second, and third anniversaries of the IPO Date, provided that you are employed by the Company through the applicable vesting date, and (ii) shall be subject to such other terms and conditions consistent with the IPO Issuer's grant of equity-based awards to similarly-situated employees.

(c) In addition, if an IPO occurs during your employment hereunder, you will be eligible to receive an annual incentive equity award grant in a form and at a time determined by the Compensation Committee of the board of directors of the IPO Issuer on terms and conditions no less favorable to you than those provided to other senior management team members of the Company, with the amount of such annual incentive equity awards (and the timing of the grant of such awards) to be determined by the Compensation Committee of the board of directors of the IPO Issuer. All such annual incentive equity awards granted to you will be subject to vesting and other terms of a company-wide equity plan to be implemented by the IPO Issuer in connection with the IPO.

(d) For purposes hereof, the following terms shall have the following meanings:

(i) "IPO" means an initial public offering and sale of any common stock of any member of the Parent Group pursuant to an effective registration statement under the Securities Act.

(ii) "IPO Issuer" means the applicable member of the Parent Group whose common stock is registered in the IPO.

(iii) "Securities Act" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

4. Benefits; Reimbursement of Expenses.

(a) During the Term, you will be eligible to receive benefits in accordance with the Company's standard benefit plans approved by the Board which are provided to other senior executives of the Company (excluding any incentive equity compensation, which will be determined on a case by case basis), as the same may be amended, modified or replaced from time to time, which at a minimum will include health insurance on the same terms and conditions provided to other senior management team members of the Company, paid time off in accordance with Company policy for senior management team members and reimbursement of business expenses as described in Section 4(b) below.

(b) Promptly following your presentation to the Company of reasonable supporting documentation therefor, the Company shall reimburse you for all business travel, entertainment and other expenses, in each case, incurred by you in connection with the performance by you of your duties pursuant to this Agreement which are consistent with the Company's policies in effect from time to time regarding such business expenses. In addition, upon presentation of appropriate documentation, the Company shall pay your reasonable attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, up to a maximum of $10,000 which shall be paid on or as soon as reasonably practicable following the Effective Date.

(c) To the extent any reimbursements or in-kind benefits under this Agreement constitute "non-qualified deferred compensation" for purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), (i) all such expenses, benefits or other reimbursements under this Agreement shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by you, (ii) any right to such reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit, and (iii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

5. Equity Award Matters.

(a) From and following the Effective Date, "Fair Market Value" for purposes of the repurchase right set forth in Section 4 of that certain Incentive Unit Purchase Agreement, dated August 29, 2018 by and between you and Torrid Holding LLC (the "Incentive Unit Agreement") the determination of "Fair Market Value" shall not include any discounts for lack of marketability or minority ownership of the units being repurchased.

(b) If a Change of Control (as defined in the Incentive Unit Agreement) of the Company occurs prior to an IPO, then, so long as you remain continuously employed by the Company through the consummation of such Change of Control, any then-outstanding unvested equity-based awards held by you as of immediately prior to such Change of Control will vest in full upon, and subject to the consummation of, such Change of Control.

(c) If during the two year period immediately following the consummation of a Change of Control that occurs following an IPO, your employment with the Company and its subsidiaries is terminated for any reason other than for Cause, or you terminate your employment with the Company and its subsidiaries for Good Reason, any then-outstanding unvested equity-based awards held by you as of immediately prior to the date of such termination of employment will vest in full on the 60th day following the date of your termination of employment, subject to the your execution and non-revocation of a customary general release in the form attached hereto as Exhibit A prior to such date.

6. Payments on Termination of Employment.

(a) If your employment terminates for any reason, the Company shall pay to you (i) the portion of your Base Salary and paid time off, if any, accrued and unpaid through the date of termination of your employment and (ii) any annual bonus earned for the prior fiscal year (*i.e.*, for the fiscal year prior to the fiscal year in which your termination occurs) pursuant to Section 2 hereof, if any, which has not been previously paid. The amounts payable to you pursuant to the preceding sentence will be paid to you at such times as you would have otherwise been entitled to receive such amounts had your employment not been terminated (determined in accordance with the Company's payroll practices at the time of termination). You shall also be entitled to elect to purchase benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") from the Company and/or its provider on the same terms made available to other former employees of the Company.

(b) If your employment is terminated by reason of your death or Disability (as defined below), the Company will also pay you (or your estate) a prorated portion of your annual Target Bonus described in Section 2 above earned for the fiscal year in which any such termination of your employment occurs, prorated based upon the number of days you were employed during such fiscal year, which amount shall be paid at such time annual bonuses are paid to other senior executives of the Company, but in any event by December 31st immediately following the completion of such fiscal year.

(c) In addition, upon the Company's termination of your employment without Cause or your resignation of your employment for Good Reason, the Company will pay you the following:

(i) Severance; and

(ii) If you are eligible for, and timely elect, continued coverage under COBRA for yourself and/or your eligible dependents under the Company's group health insurance plans following the termination of your employment in accordance with this Section 6(c), the Company shall pay the COBRA premiums necessary to continue the health insurance coverage in effect for you and/or your eligible dependents as of the date of your termination of employment with the Company until the earliest of (A) twelve (12) months following your termination date (the "COBRA Severance Period"); (B) the expiration of your eligibility for continuation coverage under COBRA; and (C) the date on which you become eligible for group health insurance coverage in connection with new employment. If you become eligible for coverage under another employers group health plan, or otherwise cease to be eligible for COBRA coverage during the COBRA Severance Period, you must immediately notify the Company of such event, and the Company's obligation to pay COBRA premiums on your behalf will cease. Notwithstanding the foregoing, provided, further, that the Company may modify the continuation coverage contemplated by this Section 6(c)(ii) to the extent reasonably necessary to avoid the imposition of any excise taxes on the Company for failure to comply with the nondiscrimination requirements of the Patient Protection and Affordable Care Act of 2010, as amended, and/or the Health Care and Education Reconciliation Act of 2010, as amended (to the extent applicable).

Except as otherwise set forth in this Section 6, all of your rights to any remuneration of any kind or nature whatsoever from the Company or any member of the Parent Group shall cease upon termination of your employment.

(d) For purposes of this Agreement, the following terms shall have the following meanings:

(i) "Cause" means your (A) conviction of a felony (or your entry of a plea of guilty or "no contest" with respect to a felony), (B) fraudulent conduct, (C) willful refusal to materially perform your duties (except during periods when you are unable to perform such duties as a result of your illness (either physical or mental) or other incapacity or excused absence or vacation) consistent with your position and title as reasonably directed by the Board, (D) willful misconduct which has a material adverse effect on the business or reputation of the Company or its subsidiaries, or (E) a material breach by you of your obligations set forth in this Agreement; provided that you shall not be deemed to have been terminated for Cause in the case of clause (E) above, unless such breach is not fully corrected prior to the expiration of the fifteen (15)-day period following delivery to you of the Company's written notice of its intention to terminate your employment for Cause describing the basis therefor in reasonable detail. For purposes of this "Cause" definition, an act or failure to act shall be considered "willful" only if done or omitted to be done without a good faith reasonable belief that such act or failure to act was in the best interests of the Company and its subsidiaries.

(ii) "Disability" (A) means any incapacity due to a physical or mental illness or injury which results in your inability to perform your duties with reasonable accommodation for a total of 120 days during any twelve (12)-month period, as determined by the Board in its good faith judgment and (B) will be deemed to have occurred on the 120th day of such inability to perform.

(iii) "Good Reason" means you resign your employment with the Company as a result of one or more of the following events that occur without your written consent: (A) any material adverse change in your authority, responsibilities or duties such that you no longer have the title of, or serve or function as, the Company's Chief Executive Officer (except during periods when you are unable to perform such duties as a result of your illness (either physical or mental) or other incapacity or excused absence or vacation), (B) a material breach by the Company of this Agreement (including, without limitation, any reduction in your Base Salary or your bonus opportunity described in Section 2(a) hereof), or (C) a relocation of your principal business location to an area outside of the Los Angeles, California metropolitan area; provided that you must deliver to the Company written notice of your resignation no later than sixty (60) days after you become aware of the occurrence of any such event in order for your purported resignation with Good Reason to be effective hereunder and such resignation will not be effective until the sixtieth (60th) day following receipt of any such written notice by the Company (the "Notice of Termination"). Notwithstanding anything contained herein to the contrary, you shall not have Good Reason for termination if, within thirty (30) days after the receipt by the Company of your Notice of Termination, the Company corrects the action or failure to act that constitutes the purported grounds for termination for Good Reason as set forth in the Notice of Termination.

(iv) "Severance" means, without duplication of amounts, (A) an amount equal to twelve (12) months of your then-current Base Salary and (B) a prorated portion of your annual Target Bonus described in Section 2 above earned based on actual Company performance for the fiscal year in which a termination of employment pursuant to Section 6(c) occurs, prorated based upon the number of days you were employed during such fiscal year, which amount shall be paid at such time annual bonuses are paid to other senior executives of the Company, but in any event by December 31st immediately following the completion of such fiscal year. Subject to Section 6(f), the amounts payable to you pursuant to the preceding sentence will be paid to you at such times as you would have otherwise been entitled to receive such amounts had your employment not been terminated (determined in accordance with the Company's payroll practices at the time of termination), except as otherwise provided herein. As a condition to the Company's obligation to pay you Severance, you shall enter into and deliver a customary general release in the form attached hereto as Exhibit A whereby you release any and all claims arising out of or related to your employment with the Company and the members of the Parent Group and the termination of your employment. Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to pay you Severance during such times as you are in violation of Sections 8, 9, 10 or 11 of this Agreement.

(e) Release. You shall forfeit all rights to Severance payments unless the release referred to in Section 6(d)(iv) above is signed, delivered and not subject to revocation within sixty (60) days following the date of your termination of employment. If the foregoing release is executed, delivered and not subject to revocation as provided in the preceding sentence, then the following shall apply:

(i) To the extent that any such cash payment or continuing benefit to be provided is not "nonqualified deferred compensation" for purposes of Code Section 409A, then such payment or benefit shall commence upon the first scheduled payment date immediately following the date that the release is executed, delivered and not subject to revocation (the "Release Effective Date"). The first such cash payment shall include payment of all amounts that otherwise would have been due prior to the Release Effective Date under the terms of this Agreement applied as though such payments commenced immediately upon your termination of employment, and any payments made thereafter shall continue as provided herein. The delayed benefits shall in any event expire at the time such benefits would have expired had such benefits commenced immediately following your termination of employment.

(ii) To the extent that any such cash payment to be provided is "nonqualified deferred compensation" for purposes of Code Section 409A, then such payments shall be made or commence upon the sixtieth (60th) day following your termination of employment. The first such cash payment shall include payment of all amounts that otherwise would have been due prior thereto under the terms of this Agreement had such payments commenced immediately upon your termination of employment, and any payments made thereafter shall continue as provided herein.

(f) In the event of your termination of employment, you will take all reasonably necessary actions to effect a smooth transition of your duties with respect to each member of the Parent Group to such person or persons as may be designated by the Board.

(g) In the event the stock of the Company or any of its subsidiaries or their respective parent companies (including any member of the Parent Group) is publicly traded and you are a "specified employee" as that term is defined under U.S. Department of Treasury Regulation ("Treasury Regulation") Section 1.409A-1(h)(3), as promulgated under the Code, then, except as otherwise permitted under Code Section 409A and the Treasury Regulations promulgated thereunder, (i) with respect to any such amounts payable under Section 6(d)(iv)(A), you will begin receiving payments (without duplication of amounts) on the first scheduled payroll date in the seventh (7th) month following the termination of the Term and the first such payment will include the accumulated payments during the first six (6) months following the termination of the Term that otherwise would have been due under Section 6(d)(iv)(A) had such payments commenced immediately following the termination of the Term, and any remaining payments made thereafter with respect to Section 6(d)(iv)(A) shall continue as provided in Section 6(d)(iv), and (ii) with respect to any such amounts payable under Section 6(d)(iv)(B), you will receive such payment on the last to occur of (A) the date such payment would have otherwise been payable pursuant to Section 6(d)(iv)(B), and (B) the first schedules payroll date in the seventh (7th) month following the termination of the Term.

(h) For purposes of Code Section 409A, (i) references herein to your "termination of employment" or like reference shall refer to your separation from service with the Company within the meaning of Code Section 409A and (ii) the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(i) It is the intent of the parties to this Agreement that this Agreement shall be interpreted, construed and operated in compliance with any applicable provisions of Code Section 409A and the Treasury Regulations promulgated thereunder. To the extent that future regulations or guidance issued pursuant to Code Section 409A or the Treasury Regulations promulgated thereunder require any amendments to this Agreement as to the form and timing of the payment of benefits hereunder, the parties agree that they will consent to, and make, such amendments, subject, in each such case, to the preservation of the parties' respective economic interests and legal rights and obligations hereunder.

7. Term. The term (the "Term") of this Agreement shall commence as of the Effective Date and shall terminate immediately upon the first to occur of (i) the effective date of your resignation with or without Good Reason (it being agreed that in the case of your resignation without Good Reason, you shall provide the Company with not less than thirty (30) days written notice prior to the effective date of any such resignation), death or Disability (as defined below) and (ii) the termination of your employment by the Company for Cause or without Cause. Any termination of this Agreement by the Company shall be effective as specified in a written notice to you from the Company. Your termination of employment with the Company for any reason shall be deemed to automatically remove you, without further action, from any and all offices held by you with the Company and the members of the Parent Group (including, without limitation, any office as a member of the board of directors or board of managers or similar governing body of any member of the Parent Group). You agree to promptly sign and submit notice(s) of resignation or any other documents reasonably requested in order for any member of the Parent Group to effectuate your removal from any offices held by you.

8. Confidential Information.

(a) You acknowledge that the information, observations and data (including, without limitation, trade secrets, know-how, research and product plans, customer lists, software, inventions, processes, formulas, technology, designs, drawings, specifications, marketing and advertising materials, distribution and sales methods and systems, sales and profit figures and other technical and business information) concerning the business or affairs of the Company or any member of the Parent Group obtained by you while employed by the Company or any member of the Parent Group or while serving as an officer, director or manager of the Company or any member of the Parent Group ("Confidential Information") are the property of the Company and the members of the Parent Group. In addition to the above, you specifically acknowledge and agree that proprietary or confidential information about the customers, suppliers, licensees, licensors and other business relations of Parent, the Company and/or any other members of the Parent Group is Confidential Information and constitutes trade secrets of the Parent Group. Therefore, during the Term and at all times thereafter, you agree that you shall not disclose to any unauthorized person or use for your own purposes any Confidential Information without the prior written consent of the Board or the applicable Parent Group member's board of managers or other governing body, as the case may be, unless and to the extent that (i) the aforementioned matters become generally known to and available for use by the public other than as a result of your acts or omissions to act or (ii) you are required to disclose such Confidential Information pursuant to applicable law (it being agreed you shall cooperate with the Company's efforts (and at the Company's cost), if requested by the Company, to obtain a protective order or other assurances that such Confidential Information shall be accorded confidential treatment); provided that with respect to each portion of the Confidential Information that qualifies as a trade secret under applicable law, each such portion of such Confidential Information shall be held and treated in accordance with the provisions of this Agreement for such maximum period of time as is allotted for trade secrets under applicable law. You will deliver to the Company at the termination of your employment, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) to the extent containing Confidential Information, Work Product (as defined in Section 9 below) or related to the business of the Company or any member of the Parent Group which you may then possess or have under your control.

(b) 18 U.S.C. § 1833(b) provides: "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). Accordingly, the parties to this Agreement have the right to disclose in confidence trade secrets to federal, state, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law. The parties also have the right to disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure.

(c) Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall be interpreted so as to impede you (or any other individual) from reporting possible violations of federal law or regulation to any governmental agency or entity, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures under the whistleblower provisions of federal law or regulation. You do not need the prior authorization of the Company to make any such reports or disclosures and you shall not be required to notify the Company that such reports or disclosures have been made.

9. Inventions and Patents.

(a) You acknowledge that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable) which relate to the Company's or any member of the Parent Group's actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by you while employed by the Company or any member of the Parent Group ("Work Product") belong to the Company or the other applicable members of the Parent Group. You shall promptly disclose such Work Product to the Board and perform all actions requested by the Board (whether during or after your employment with the Company) to establish and confirm such ownership (including, without limitation, assignments, consents, powers of attorney and other instruments).

(b) Notwithstanding anything to the contrary herein, the provisions of this Section 9 will not apply to any Work Product which qualifies fully under the provisions of California Labor Code Section 2870, including any idea or invention which is developed entirely on your own time without using the equipment, supplies, facilities or trade secret information of the Parent Group, and which is not related to the business of the Parent Group (either actual or demonstrably anticipated), and which does not result from work performed for the Parent Group.

10. Conflict of Interest.

(a) In further consideration of the remuneration to be paid hereunder, you agree that during the Term, you shall devote your full time and energies to fulfill all responsibilities to the Company in the capacity set forth herein. During the Term and during the twelve (12)-month period immediately thereafter (such period consisting of the Term and ending on twelve (12)-month period immediately thereafter, the "Restrictive Term"), you shall not directly or indirectly (whether as an owner, partner, shareholder, agent, officer, director, employee, independent contractor, consultant or otherwise) own any interest in, operate, invest in, manage, control, participate in, consult with, render services for (alone or in association with any person or entity), or in any manner engage in any business activity on behalf of a Competing Business within any geographical area in which the Company or its subsidiaries operates or plan to operate. Nothing herein shall prohibit you from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as you have no active participation in the business of such corporation. For purposes of this paragraph, "Competing Business" means

any person, entity or business in the United States of America engaged in any phase of the business of developing, manufacturing, marketing, selling, licensing or distributing of products or services that are the same as, or are substantially similar to, or which otherwise compete with the products or services of the Company and its subsidiaries, including products or services the Company and/or its Subsidiaries have taken steps to engage in as of the date of Executive's termination of employment, (whether in the retail store channel, direct marketing or e-commerce channel or any combination of the foregoing or otherwise), including, but not limited to, any apparel business or division thereof that is engaged in the development, manufacturing, marketing, sale, licensing or distribution of plus-size apparel; provided, that the foregoing prohibition shall not apply to any such person, entity or business that competes with the Company or any of its subsidiaries through a division, subsidiary, or other business unit of such person, entity or business so long as you do not work or consult with or for, render any services to, or otherwise give advice to or in any manner participate or engage in any business activity on behalf of, any such division, subsidiary, or business unit that does so compete.

(b) In further consideration of the remuneration to be paid hereunder, you agree that during the Restrictive Term, you will not, either directly or indirectly, for yourself or any other person or entity (i) induce or attempt to induce any employee of Parent, the Company or any other member of the Parent Group to leave the employ of Parent, the Company or such other member of the Parent Group, or in any way interfere with the relationship between Parent, the Company or any of the other members of the Parent Group, on the one hand, and any employee thereof, on the other, (ii) hire any person who is an employee of Parent, the Company or any of the other members of the Parent Group (or in the case of a former employee, was an employee of Parent, the Company or any of the other members of the Parent Group at any time during the 180 day period prior to any attempted hiring by you) or (iii) induce or attempt to induce any customer, supplier, licensee, licensor or other material business relation of Parent, the Company or any of the other members of the Parent Group to cease doing business with Parent, the Company or such other member of the Parent Group, or in any way interfere with the relationship between any such customer, supplier, licensee, licensor or material business relation, on the one hand, and Parent, the Company or any of the other members of the Parent Group, on the other (including, without limitation, making any negative statements or communications about Parent, the Company or any such other member of the Parent Group). Notwithstanding the foregoing, the provisions of this Section 10(b)(i) and (ii) shall not be violated due to the solicitation or hiring of store-level employees by general advertising or solicitation not specifically targeted at Company-related person. You agree that the aforementioned covenant contained in this Section 10 is reasonable with respect to its duration, geographical area and scope.

11. Nondisparagement. From and after the Effective Date and following termination of your employment with the Company, (a) you agree not to make any statement that is intended to become public, or that should reasonably be expected to become public, and that criticizes, ridicules, disparages or is otherwise derogatory of the Company, any of its subsidiaries and affiliates, or their respective employees, officers, directors or equityholders and (b) the Company agrees to direct its directors and executive officers not to make any statement that is intended to become public, or that should reasonably be expected to become public, and that criticizes, ridicules, disparages or is otherwise derogatory to you. The foregoing shall not be violated by truthful statements in response to legal process, required governmental testimony or filings, or administrative or arbitral proceedings (including, without limitation, depositions in connection with such proceedings).

12. Enforcement of Covenants. If, at the time of enforcement of Sections 8, 9, 10 or 11 of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area. Because your services are unique and because you have access to Confidential Information and Work Product, the parties hereto agree that money damages may not be an adequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company may, in addition to other rights and remedies existing in its favor, apply to any court for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security). In addition, in the event a court determines that you breached or violated Section 10, the periods of such restrictive covenants will be tolled until such breach or violation ceases.

13. Other Businesses. As long as you are employed by the Company, you agree that you will not, except with the express written consent of the Board, become engaged in, render services for, or permit your name to be used in connection with any business other than the business of the Company and Parent and the other members of the Parent Group and will not serve as an officer, employee or director or in a similar capacity of any other entity. Notwithstanding the foregoing, you may devote a reasonable amount of your time to civic or charitable activities and to the management of your personal investments so long as such activities do not interfere with the performance of your duties and responsibilities for the Company and the other members of the Parent Group.

14. Complete Agreement. This Agreement embodies the complete agreement and understanding among the parties with respect to the subject matter hereof and thereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof or thereof in any way, including, without limitation, any prior agreement between you and the Company or any of its affiliates (including Parent) or predecessors with respect to your employment by the Company or any of its affiliates (including Parent) or predecessors. Sycamore Partners Management, L.P. shall be an intended third party beneficiary of the terms and conditions of this Section 14.

15. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same Agreement.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company, and your and its respective heirs, successors and assigns, except that you may not assign your rights or delegate your obligations hereunder.

17. Choice of Law; Waiver of Jury Trial. This Agreement will be governed by the internal laws of the State of Delaware. Each of the undersigned submits to the co-exclusive jurisdiction of the United States District Court and any Delaware state court sitting in Wilmington,

Delaware over any lawsuit under this Agreement and waives any objection based on venue or forum non conveniens with respect to any action instituted therein. You acknowledge and agree that you were represented by counsel in connection with the negotiation of this Agreement. You acknowledge and agree that, pursuant to Section 925 of the California Labor Code, (i) you have waived the application of California law to this Agreement and any disputes under this Agreement, (ii) you have waived any right to have any disputes under this Agreement adjudicated in California, and (iii) you acknowledge and agree that any disputes under this Agreement shall not be deemed to be a controversy arising in California. Each of the undersigned waives the necessity for personal service of any and all process upon it and consents that all such service of process may be made by registered or certified mail (return receipt requested), in each case directed to such party in accordance with Section 23 hereof, and service so made will be deemed to be completed on the date of delivery. Each of the undersigned consents to service of process as aforesaid. Nothing in this Agreement will prohibit personal service in lieu of the service by mail contemplated herein. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. **Certain Tax Matters**. Notwithstanding any other provision of this Agreement to the contrary, to the extent that any payment or distribution of any type to or for you by the Company (or by any affiliate of the Company, any person or entity who acquires ownership or effective control of the Company or ownership of a substantial portion of the Company's assets (within the meaning of Section 280G of the Code and the regulations thereunder)), or any affiliate of such person or entity, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "Total Payments"), is or will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), then the Total Payments shall be reduced (but not below zero) if and to the extent that a reduction in the Total Payments would result in your retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if you received the entire amount of such Total Payments. The determination of whether the Total Payments shall be reduced and the amount of such reduction shall be provided to you by the Company, together with detailed supporting calculations and documentation as soon as practicable following the occurrence of the relevant triggering event, and, absent manifest error, such determination shall be final and binding upon you and the Company. In the event a portion of the Total Payments is required to be reduced, they shall be reduced in the following order of priority in a manner consistent with Section 409A: (a) first from cash compensation that is exempt from Section 409A, (b) next from equity compensation that is exempt from Section 409A, then (c) from payments that are subject to Section 409A in reverse chronological order of scheduled distribution.

19. **Indemnification**. The Company hereby covenants and agrees to indemnify you and hold you harmless to the fullest extent permitted by applicable laws against and in respect to any and all actions, suits, proceedings, claims, demands, judgments, losses, damages and reasonable out-of-pocket costs and expenses (including reasonable out-of-pocket attorney's fees and expenses) resulting from your good faith performance of your duties and obligations with Parent, the Company or any of their subsidiaries or as the fiduciary of any benefit plan of Parent, the Company or their subsidiaries. To the extent permitted by applicable laws, the Company, within thirty (30) days of presentation of invoices, shall reimburse you for all reasonable out-of-pocket legal fees and disbursements reasonably incurred by you in connection with any such

indemnifiable matter; provided that you shall consult with the Company prior to selecting your counsel and shall obtain the Company's approval, which approval shall not be unreasonably withheld, of such counsel. In addition, the Company shall cover you under its directors and officers liability insurance policy (and shall cause Parent to cover you under Parent's directors and officers liability insurance policy) both during the Term and during the six-year period thereafter in the same amount and to the same extent, if any, as the Company and Parent (as applicable) covers their respective other officers and directors during any such period of time. In no event shall you be liable to the Company or any member of the Parent Group as a result of the performance of your duties hereunder except as a result of your willful misconduct or knowing violation of applicable law. Each of the Company (on its own behalf and on behalf of Parent) shall ensure that their respective constituent documents shall at all times provide for the maximum limitation on liability for their officers and directors that is permitted by applicable law as in effect from time to time.

20. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Board and you, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

21. Company Representations. The Company represents and warrants that this Agreement has been duly authorized and approved by the Board.

22. Executive Representations. You hereby represent and warrant that you are not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that your execution and performance of this Agreement will not violate or breach any other agreements between you and any other person or entity.

23. Notices. Notices and all other communications provided for in this Agreement shall be delivered to the addresses set forth below:

To the Company:

Torrid LLC
18305 East San Jose Avenue
City of Industry, California 91748
Attn: Head of Human Resources

With copies (which shall not constitute notice) to:

Sycamore Partners
9 West 57th Street
31st Floor
New York, NY 10019
Attention: Stefan Kaluzny; Dary Kopelioff
Telecopy: 212-796-8560

Kirkland & Ellis LLP
300 N. LaSalle Street
Chicago, IL 60654
Attention: James P. Faley, P.C.
Telecopy: 312-862-2200

to you, at the address then on file for you at the Company.

Please countersign a copy of this Agreement to evidence your agreement to the terms and conditions contained herein.

Sincerely,

TORRID LLC

By: Torrid Intermediate LLC

Its: Manager

By: /s/ Stephan Kaluzny
Stephan Kaluzny
Manager

ACKNOWLEDGED, ACCEPTED AND AGREED:

/s/ Elizabeth Muñoz-Guzman
Elizabeth Muñoz-Guzman

Date: December 13, 2019

Exhibit A

Release Agreement

[See Attached]

Exhibit 10.12

EXECUTION VERSION

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made as of December 13, 2019, by and between Torrid LLC, a California limited liability company (the "Company"), and Marc Katz ("Executive"), a resident of New Jersey. This Agreement shall become effective as of the date hereof; provided that in the event the Commencement Date (as defined below) does not occur by January 3, 2020, neither the Executive nor the Company will have any rights or obligations pursuant to this Agreement and this Agreement shall be null and void *ab initio*.

WHEREAS, the Company desires to employ Executive during the Employment Period, and Executive is willing to accept employment with the Company, on the terms and conditions set forth herein; and

WHEREAS, the agreements of Executive in Sections 6, 7 and 8 are material inducements to enter into this Agreement,

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In this Agreement:

"Base Salary" has the meaning given to that term in Section 3(a).

"Board" shall mean (i) during any such period in which Torrid Intermediate LLC, a Delaware limited liability company, or any affiliate thereof, is the managing member of the Company and the Company shall not have a board of directors or board of managers, the board of managers of Torrid Intermediate LLC, and (ii) otherwise, the board of directors or board of managers or other similar governing body, as applicable, of the Company.

"Cause" means Executive (i) is convicted of a felony or other crime involving either dishonesty towards the Company or any of its Subsidiaries or material misuse of property of the Company or any of its Subsidiaries; (ii) engages in willful misconduct or fraud with respect to the Company or any of its Subsidiaries or any of their customers or suppliers or an intentional act of dishonesty or disloyalty in the course of Executive's employment; (iii) refuses to perform Executive's material obligations under this Agreement (except in connection with a Disability) as reasonably directed by the Board or the Company's chief executive officer, which failure is not cured within 15 days after written notice thereof to Executive; (iv) misappropriates one or more of the Company's or any of its Subsidiaries material assets or business opportunities; or (v) breaches Sections 6, 7 or 8 hereof which breach, if capable of being cured, is not cured within 10 days after written notice thereof has been delivered to Executive. The Company may allow Executive an extension of time to cure a breach if the Board, in its sole discretion, determines that such extension is appropriate under the circumstances.

"Company" has the meaning set forth in the preamble above; together with its Subsidiaries and affiliates and includes all predecessor entities.

"Confidential Information" has the meaning given to that term in Section 6(a).

"Court" has the meaning given to that term in Section 9(b).

"Disability" means Executive's inability to perform the essential duties, responsibilities and functions of Executive's position with the Company and its Subsidiaries for a continuous period of 180 days as a result of any mental or physical disability or incapacity, as determined under the definition of disability in the Company's long-term disability plan so as to qualify Executive for benefits under the terms of that plan or as determined by an independent physician to the extent no such plan is then in effect. Executive shall reasonably cooperate in all respects with the Company if a question arises as to whether Executive has become disabled (including, without limitation, submitting to an examination by a medical doctor or other health care specialists selected by the Company and authorizing such medical doctor or such other health care specialist to discuss Executive's condition with the Company).

"Employment Period" means the period commencing on the date Executive commences employment with the Company, which shall be a date to be mutually agreed between the Company and Executive but in any event no later than January 3, 2020 (the "Commencement Date") and ending on the date of Executive's termination of employment as contemplated in Section 5(a).

"Fair Market Value" has the meaning set forth in the Fourth Amended and Restated Limited Liability Company Agreement of Parent; provided, however, that (a) prior to an IPO, for purposes of the repurchase right set forth in Section 4 of that certain Incentive Unit Purchase Agreement dated December 13, 2019 by and between Executive and Torrid Holding LLC the determination of "Fair Market Value" shall not include any discounts for lack of marketability or minority ownership of the units being repurchased and (b) following an IPO, the Fair Market Value of IPO Issuer shall mean, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, the last sales price reported for the applicable security on the valuation date as reported on the principal national securities exchange in the United States on which it is then traded.

"Good Reason" means the occurrence of any of the following events without the written consent of Executive: (i) a material diminution of Executive's duties or the assignment to Executive of duties that are inconsistent in any substantial respect with the position, authority or responsibilities associated with Executive's position as set forth pursuant to Section 2(b), other than any such authorities, duties or responsibilities assigned at any time which are by their nature, or which are identified at the time of assignment, as being temporary or short-term; (ii) the Company's requiring Executive to be based at a location which is fifty (50) or more miles from the City of Industry, California; or (iii) a material breach by the Company of its obligations pursuant to this Agreement (including, without limitation, its obligations pursuant to Section 3) (which such breach goes uncured after notice and a reasonable opportunity to cure); provided, however, no condition enumerated in the preceding shall be deemed to be "Good Reason" unless within thirty (30) days of the initial existence of such condition, Executive shall have given the Company written notice thereof specifically describing the condition giving rise to "Good Reason" and allowing the Company a period of at least thirty (30) days from the date of receipt of the notice to remedy such condition. Notwithstanding the foregoing, in no event will a

condition give rise to "Good Reason" hereunder unless within ten (10) days after the expiration of the period provided in the Executive's notice for the Company to remedy said condition but in no event later than one hundred and twenty (120) days initial existence of said condition, Executive shall have actually terminated his employment with the Company by giving written notice of resignation for failure of the Company to remedy such condition.

"IPO" means an initial public offering and sale of any common stock of any member of the Parent Group pursuant to an effective registration statement under the Securities Act.

"IPO Issuer" means the applicable member of the Parent Group whose common stock is registered in the IPO.

"Parent Group" means, collectively, Torrid Holdings L.L.C., a Delaware limited liability company ("Parent"), and each of its subsidiaries (including the Company). Any references to the "members of the Parent Group" and similar phrases shall be deemed to refer to Parent and its subsidiaries (including the Company).

"Termination Year" means the calendar year in which the Employment Period is terminated.

"Securities Act" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

"Subsidiaries" means any corporation or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company, directly or through one of more Subsidiaries.

"Work Product" has the meaning given to that term in Section 7.

2. Employment, Position and Duties.

(a) The Company shall employ Executive and Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the Employment Period.

(b) During the Employment Period, Executive shall serve as President & Chief Financial Officer of the Company, working at the Company's offices in City of Industry, California, and shall perform the normal duties, responsibilities and functions of an executive officer of a company of a similar size and type and shall have such power and authority as shall reasonably be required to enable Executive to perform Executive's duties hereunder, subject to the power and authority of the Board to expand or limit such duties, responsibilities, functions, power and authority and to overrule actions of officers of the Company in a manner consistent with the traditional responsibilities of such office.

(c) During the Employment Period, Executive shall (i) render such administrative, financial and other executive and managerial services to the Company and its Subsidiaries which are consistent with Executive's position as the Board may from time to time direct, (ii) report to the Board or the Company's chief executive officer and shall devote Executive's best efforts and Executive's full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries and (iii) submit to the Board all business, commercial and investment opportunities presented to Executive or of which Executive becomes aware which relate to the business of the Company and its Subsidiaries, and unless approved by the Board in writing, Executive shall not pursue, directly or indirectly, any such opportunities on Executive's own behalf. Executive shall perform Executive's duties, responsibilities and functions to the Company and its Subsidiaries hereunder to the best of Executive's abilities in a diligent, trustworthy and professional manner.

3. Compensation and Benefits.

(a) During the Employment Period, Executive's base salary shall be a minimum of Eight Hundred Thousand Dollars ($800,000.00) per annum (as increased or decreased in accordance with this Agreement from time to time, the "Base Salary"), which salary shall be payable by the Company in regular installments in accordance with the Company's general payroll practices (in effect from time to time). Executive's Base Salary will be subject to annual review and increase or decrease (but shall not be decreased below the Base Salary in effect on the date of this Agreement) by the Board during the Employment Period.

(b) For each fiscal year of the Company during the Employment Period, commencing with the fiscal year commencing on February 2, 2020, Executive shall be entitled to participate in the Company's annual bonus plan for similarly-situated senior executives as such is approved by the Board or a committee thereof, as in effect from time to time, with a target annual bonus of One-hundred percent (100%) of Executive's Base Salary ("Target Bonus") and a maximum annual bonus opportunity of up to Two-hundred percent (200%) of Executive's Base Salary. Executive's annual plan performance targets will be established annually by the Board prior to the start of each fiscal year (which targets will generally focus on financial metrics of the Company in comparison to budget). Any bonus earned under this Section 3(b) shall be paid as soon as practicable and within forty-five (45) days following the completion of Parent's audit for the fiscal year during which such bonus was earned under this Section 3(b), subject to Executive's continuous employment through the applicable payment date. In addition to the foregoing, subject to Executive's continued employment through the payment date thereof, Executive shall receive a Target Bonus in respect of the Company's fiscal year ending February 1, 2020, pro rated based on the period of time between the Commencement Date and February 1, 2020.

(c) As soon as reasonably practicable following the Commencement Date, Executive will be granted 700,000 Class E Units and 700,000 Class F Units of Torrid Holding LLC (the "Incentive Units"), which are intended to be treated as "profits interests" for U.S. federal income tax purposes. The Incentive Units will vest in accordance with and otherwise be subject to the terms and conditions of the Fourth Amended and Restated Limited Liability Company Agreement of Parent and an Incentive Unit Purchase Agreement substantially in the form attached hereto as Exhibit B.

(d) The Board, or a committee or appointee thereof, during the term of this Agreement, shall review annually, or at more frequent intervals which the Board determines is appropriate, Executive's compensation and may award Executive compensation as the Board deems appropriate in its sole discretion; provided, however, that Executive's base salary shall not be reduced pursuant to any such review or otherwise.

(e) Executive shall be entitled to twenty work days of paid vacation each calendar year in accordance with the Company's policies, which if not taken in any year may not be carried forward to any subsequent calendar year and no compensation shall be payable in lieu thereof. Such vacation will accrue as of January 1 of each year, except that if Executive's employment commences after January 31 of any calendar year, Executive shall accrue twenty days of paid vacation pro rated for the number of full calendar months remaining in the calendar year in which the Employment Period commences.

(f) During the Employment Period, the Company shall reimburse Executive for all reasonable business expenses incurred by Executive in the course of performing Executive's duties, responsibilities and functions under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(g) Executive shall be eligible to receive benefits in accordance with the Company's standard benefit plans approved by the Board which are provided to other senior executives of the Company (excluding any incentive equity compensation, which will be determined on a case by case basis), as the same may be amended, modified or replaced from time to time, which at a minimum will include health insurance on the same terms and conditions provided to other senior management team members of the Company.

(h) Executive will be indemnified and defended for acts performed (or omissions made) in Executive's capacity as an officer or director of the Company to the fullest extent specified in the Company's operating agreement and as permitted under Delaware or California law, as applicable.

(i) The Company will reimburse Executive for reasonable and demonstrated out-of-pocket costs incurred in connection with the relocation of Executive's principal residence to the vicinity of the Company's headquarters in City of Industry, grossed-up for any income or other taxes incurred by Executive due to such reimbursement, up to an aggregate amount not to exceed $250,000, including the value of any gross-up amount, and otherwise in accordance with the Company's relocation policy in effect from time to time (the "Relocation Expenses"). The Company's relocation policy includes the following moving-related expenses: (i) packing and moving of household goods, (ii) one house hunting trip to California, (iii) shipment of up to two automobiles, (iv) temporary housing and storage of household goods for up to 90 days, (v) standard and customary costs associated with the sale of Executive's current home in New Jersey, including realtor fees/commissions not to exceed 6%, (vi) standard and customary closing

costs, excluding points on a loan, associated with the purchase of a home in California prior to January 1, 2021, and (vii) certain miscellaneous fees and expenses. All Relocation Expenses payable under this Section 3(i) shall be reimbursed subject to Executive's presentment to the Company of appropriate documentation. If Executive's employment is terminated prior to the twelve (12)-month anniversary of the Commencement Date for any reason other than by the Company without Cause, by Executive for Good Reason or due to Executive's death or Disability, Executive will repay to the Company the amount of the Relocation Expenses actually paid by the Company to Executive pursuant to this Section 3(i).

(j) Upon presentation of appropriate documentation, the Company shall pay Executive's reasonable attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, up to a maximum of $10,000 which shall be paid on or as soon as reasonably practicable following the Commencement Date.

(k) To the extent any reimbursements or in-kind benefits under this Agreement constitute "non-qualified deferred compensation" for purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), (i) all such expenses, benefits or other reimbursements under this Agreement shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Executive, (ii) any right to such reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit, and (iii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

4. Certain Matters Upon an IPO.

(a) If an IPO occurs during the Employment Period, then Executive shall be entitled to a one-time grant of restricted stock units or restricted share awards (the "IPO Stock Award") in respect of such number of shares of common stock of the IPO Issuer as is equal to $1.0 million divided by the initial public offering price per share of common stock of the IPO Issuer offered to the public in the IPO. The IPO Stock Award will be granted as soon as reasonably practicable following the date of the IPO (the "IPO Date"). The IPO Stock Award (i) shall vest as to (x) 50% of the shares of common stock subject to the IPO Stock Award as of the date of grant, (y) 50% of the shares of common stock subject to the IPO Stock Award in equal installments on each of the first, second, and third anniversaries of the IPO Date, provided that Executive is employed by the Company through the applicable vesting date, and (ii) shall be subject to such other terms and conditions consistent with the IPO Issuer's grant of equity-based awards to similarly-situated employees. At the Executive's election, the Executive may satisfy payment of any required withholding in respect of federal, state, local or foreign taxes by directing the IPO Issuer to withhold a number of shares of common stock subject to the IPO Stock Award having a Fair Market Value as of the required withholding date equal to the minimum tax withholding requirement; provided the IPO Issuer is not, as of the date of required withholding, restricted from selling such shares of common stock on Executive's behalf on the securities exchange on which IPO Issuer is listed (pursuant to any underwriter lockup, blackout period or otherwise).

(b) In addition, if an IPO occurs during the Employment Period, Executive shall be eligible to receive an annual incentive equity award grant in a form and at a time determined by the Compensation Committee of the board of directors of the IPO Issuer on terms and conditions no less favorable to Executive than those provided to other senior management team members of the Company, with the amount of such annual incentive equity awards (and the timing of the grant of such awards) to be determined by the Compensation Committee of the board of directors of the IPO Issuer. All such annual incentive equity awards granted to Executive shall be subject to vesting and other terms of a company-wide equity plan to be implemented by the IPO Issuer in connection with the IPO.

5. Termination and Payment Terms.

(a) The Employment Period shall end (i) immediately upon Executive's resignation, death or Disability and (ii) the Employment Period may be terminated by the Company, with or without Cause at any time prior to such date. Except as otherwise provided herein, any termination of the Employment Period by the Company shall be effective as specified in a written notice from the Company to Executive.

(b) If the Employment Period is terminated:

(i) by the Company other than for Cause or by Executive resigning for Good Reason, Executive shall be entitled to receive (1) all previously earned and accrued but unpaid Base Salary and vacation and unpaid business expenses up to the date of such termination, (2) any unpaid bonus earned by Executive for the fiscal year prior to the Termination Year, but then unpaid, and any other amounts owed under Sections 3(i) or 3(j), (3) the pro rata portion of Executive's annual bonus (pursuant to Section 3(b) hereof) during the Termination Year, based on the extent to which performance conditions are achieved for such year, pro rated based on the number of days of the Termination Year, prior to the date of termination, which payment shall be made when the bonus payments for such Termination Year, are otherwise due; (4) severance pay in the full amount of Base Salary at the time of termination or expiration from the date of termination, through the period ending on the first anniversary of the date of termination and (5) if Executive is eligible for, and timely elects, continued coverage under COBRA for Executive and/or his eligible dependents under the Company's group health insurance plans, the Company shall pay the COBRA premiums necessary to continue the health, life and other welfare insurance coverage as may be in effect for Executive and/or his eligible dependents as of the date of Executive's termination of employment with the Company until the earliest of (x) twelve (12) months following Executive's termination date (the "COBRA Severance Period"); (y) the expiration of Executive's eligibility for continuation coverage under COBRA; and (z) the date on which Executive becomes eligible for group health insurance coverage in connection with new employment. If Executive becomes eligible for coverage under another employers group health plan, or otherwise ceases to be eligible for COBRA coverage during the COBRA Severance Period, Executive must immediately notify the Company of such event, and the Company's obligation to pay COBRA premiums on Executive's behalf will cease. The Company may modify the continuation coverage contemplated by this Section 5(b)(i)(5) to the extent reasonably necessary to avoid the imposition of any excise taxes on the Company for failure to comply with the nondiscrimination requirements of the Patient Protection and Affordable Care Act of 2010, as amended, and/or the Health Care and Education Reconciliation Act of 2010, as amended (to the extent applicable).

(ii) for any other reason, including as a result of Executive's death, Disability, voluntary resignation for other than Good Reason or by the Company for Cause, Executive's sole entitlement shall be to receive all previously earned and accrued but unpaid Base Salary, vacation and unpaid business expenses up to the date of such termination or expiration and Executive shall not be entitled to any further Base Salary, bonus payments or benefits for that year or any future year, except as required by the specific provisions of any benefit plan or by law, or to any other severance compensation of any kind.

(c) Executive agrees that: (i) Executive shall be entitled to the payments and services provided for in Sections 5(b)(i)(3), 5(b)(i)(4), and 5(b)(i)(5), if any, if and only if Executive has executed and delivered the Release (and no longer subject to revocation, if applicable) attached as Exhibit A within sixty days following the date of termination and Executive has not breached as of the date of termination of the Employment Period the provisions of Sections 6, 7 and 8 hereof and docs not breach such sections or such covenants at any time during the period for which such payments or services are to be made; and (ii) the Company's obligation to make such payments and services will terminate upon the occurrence of any such breach during such period.

(d) Except as stated above, any payments pursuant to Section 5(b) shall be paid by the Company in regular installments in accordance with the Company's general payroll practices, and following such payments the Company shall have no further obligation to Executive pursuant to this Section 5 except as provided by law; provided that to the extent that the payment of any amount constitutes "nonqualified deferred compensation" for purposes of Section 409A of the Code (as defined in subsection (g) hereof), any such payment scheduled to occur during the first sixty (60) days following the termination of employment shall not be paid until the first regularly scheduled pay period following the sixtieth (60th) day following such termination and shall include payment of any amount that was otherwise scheduled to be paid prior thereto. All amounts payable to Executive as compensation hereunder shall be subject to all customary withholding, payroll and other taxes. The Company shall be entitled to deduct or withhold from any amounts payable to Executive any federal, state, local or foreign withholding taxes, excise tax, or employment taxes imposed with respect to Executive's compensation or other payments or Executive's ownership interest in the Company (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity).

(e) Executive hereby agrees that except as expressly provided herein, no severance compensation of any kind, nature or amount shall be payable to Executive and except as expressly provided herein, Executive hereby irrevocably waives any other claim for severance compensation.

(f) Except as provided in Sections 5(b)(i) and 5(b)(ii) above, all of Executive's rights pursuant to Sections 3 and 4 shall cease upon the termination of the Employment Period.

(g) Notwithstanding anything herein to the contrary, if, at the time any payment is payable to Executive pursuant to the provisions of Section 5(b)(i) above as a result of Executive's "separation from service" (within the meaning of Section 409A of the Internal revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder, the Company or any company in the affiliate group in which the Company's financial statements are consolidated in accordance with generally accepted accounting principles has a class of equity securities traded on an established domestic or foreign securities market or otherwise including, without limitation, trading on an American exchange only as American Depositary receipts ("ADR'S") and Executive is designated a "specified person" (as such term is defined in Section 409A of the Code and the regulations promulgated thereunder) pursuant to Section 409A of the Code and the regulations promulgated thereunder, then during the six month period from and after the date of Executive's "separation from service" the amount payable to Executive pursuant to the provisions of Section 5(b)(i) of the Employment Agreement shall not exceed the lesser of (x) two times Executive's annual base compensation or (y) two times the amount determined pursuant to Section 401(a)(17) of the Code, and any excess amount which accrues to Executive during such period shall be withheld during such period and paid to Executive in a lump sum upon the expiration of six months after the date of "separation from service" (or , if earlier than the end of such six month period, upon Executive's death). Any further amounts payable to Executive pursuant to Section 5(b)(i) thereafter accruing shall be paid on their scheduled payment dates.

6. Confidential Information.

(a) Executive acknowledges and agrees that the information, observations and data (including trade secrets) obtained by Executive while employed by the Parent, Company and its Subsidiaries concerning the business or affairs of the Company and its Subsidiaries are the confidential information ("Confidential Information"), and the property, of the Company and/or its Subsidiaries. Without limiting the foregoing, the term "Confidential Information" shall be interpreted as broadly as possible to include all observations, data and other information of any sort that are (i) related to any past, current or potential business of the Parent, Company or any of its Subsidiaries or any of their respective predecessors, and any other business related to any of the foregoing, and (ii) not generally known to and available for use by those within the line of business or industry of the Company or by the public (except to the extent such information has become generally known to and available for use by the public as a direct or indirect result of Executive's unauthorized acts or omissions) including all (A) Work Product (as defined below); (B) non-public information concerning development, acquisition or investment opportunities in or reasonably related to the business or industry of the Company or any of its Subsidiaries of which Executive is aware or becomes aware during the term of his employment; (C) non-public information identifying or otherwise concerning any current, former or prospective suppliers, distributors, contractors, agents or customers of the Company or any of its Subsidiaries; (D) non-public development, transition, integration and transformation plans, methodologies, processes and methods of doing business; (E) non-public strategic, marketing, promotional and financial information (including all financial statements), business and expansion plans, including plans and information regarding planned, projected and/or potential sales, pricing, discount and cost information; (F) information identifying or otherwise concerning employees, independent contractors and consultants; (G) information on new and existing programs and services, prices, terms, and related information; (H) the terms of this Agreement;

(I) all information marked, or otherwise designated, as confidential by the Company or any of its Subsidiaries or which Executive should reasonably know is confidential or proprietary information of the Company or any of its Subsidiaries; (J) all information or materials similar or related to any of the foregoing, in whatever form or medium, whether now existing or arising hereafter (and regardless of whether merely stored in the mind of Executive or employees or consultants of the Company or any of its Subsidiaries, or embodied in a tangible form or medium); and (K) all tangible embodiments of any of the foregoing.

(b) Therefore, Executive agrees that, except as required by law or court order, including, without limitation, depositions, interrogatories, court testimony, and the like (and in such case provided that Executive must give the Company and/or its Subsidiaries, as applicable, prompt written notice of any such legal requirement, disclose no more information than is so required and permit the Company to seek, at the Company's sole cost and expense, confidential treatment where available and cooperate fully with all efforts by the Company and/or its Subsidiaries to obtain a protective order or similar confidentiality treatment for such information), Executive shall not disclose to any unauthorized person or entity or use for Executive's own purposes any Confidential Information without the prior written consent of the Board, unless and to the extent that the Confidential Information becomes generally known to and available for use by the public other than as a direct or indirect result of Executive's unauthorized acts or omissions. Executive shall deliver to the Company at the termination or expiration of the Employment Period, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) embodying or relating to the Confidential Information (including any Work Product (as defined below)) or the business of the Company and its Subsidiaries which Executive may then possess or have under Executive's control and if, at any time thereafter, any such materials are brought to Executive's attention or Executive discovers them in his possession or control, Executive shall deliver such materials to the Company immediately upon such notice or discovery.

(c) 18 U.S.C. § 1833(b) provides: "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). Accordingly, the parties to this Agreement have the right to disclose in confidence trade secrets to federal, state, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law. The parties also have the right to disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure.

(d) Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall be interpreted so as to impede Executive (or any other individual) from reporting possible violations of federal law or regulation to any governmental agency or entity, including, but not limited to, the Department of Justice, the Securities and Exchange

Commission, the Congress, and any agency Inspector General, or making other disclosures under the whistleblower provisions of federal law or regulation. Executive does not need the prior authorization of the Company to make any such reports or disclosures and Executive shall not be required to notify the Company that such reports or disclosures have been made.

(e) From and after the Commencement Date and following termination of Executive's employment with the Company, (i) Executive agrees not to make any statement that is intended to become public, or that should reasonably be expected to become public, and that criticizes, ridicules, disparages or is otherwise derogatory of the Company, any of its subsidiaries and affiliates, or their respective employees, officers, directors or equityholders and (ii) the Company agrees to direct its directors and executive officers not to make any statement that is intended to become public, or that should reasonably be expected to become public, and that criticizes, ridicules, disparages or is otherwise derogatory of Executive. The foregoing shall not be violated by truthful statements in response to legal process, required governmental testimony or filings, or administrative or arbitral proceedings (including, without limitation, depositions in connection with such proceedings).

7. Intellectual Property, Inventions and Patents.

(a) Executive acknowledges and agrees that all discoveries, concepts, ideas, inventions, innovations, improvements, developments, methods, specifications, designs, analyses, drawings, reports, patents and patent applications, processes, programs, systems, software, firmware, materials, plans, sketches, models, know-how, devices, developments, data, databases, technology, trade secrets, works of authorship, copyrightable works and mask works (whether or not including any confidential information) and all registrations or applications related thereto, all other intellectual property or proprietary information and all similar or related information (whether or not patentable or copyrightable and whether or not reduced to tangible form or practice) which relate to the Parent's, Company's or any Subsidiaries' actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by Executive (whether alone or jointly with others) while employed by the Parent, Company or its Subsidiaries ("Work Product") shall be deemed to be "work made for hire" (as defined in the Copyright Act, 17 U.S.C.A. §101 et seq., as amended) and owned exclusively by the Company. To the extent that any Work Product is not deemed to be "work made for hire" under applicable law, and all right, title and interest in and to such Work Product have not automatically vested in the Company, Executive hereby (A) irrevocably assigns, transfers and conveys, and shall assign transfer and convey, to the full extent permitted by applicable law, all right, title and interest in and to the Work Product on a worldwide basis to the Company (or such other person or entity as the Company shall designate), without further consideration, and (B) waives all moral rights in or to all Work Product, and to the extent such rights may not be waived, agrees not to assert such rights against the Company or its respective licensees, successors or assigns. Executive shall, at the Company's expense, execute all documents and perform all actions reasonably requested by the Board (whether during or after the Employment Period) to establish, confirm, evidence, effectuate, maintain, protect, enforce, perfect, record, patent or register any of the Company's rights hereunder (including, without limitation, assignments, consents, powers of attorney and other instruments).

(b) Notwithstanding anything to the contrary herein, the provisions of this Section 7 will not apply to any Work Product which qualifies fully under the provisions of California Labor Code Section 2870, including any idea or invention which is developed entirely on Executive's own time without using the equipment, supplies, facilities or trade secret information of the Parent Group, and which is not related to the business of the Parent Group (either actual or demonstrably anticipated), and which does not result from work performed for the Parent Group.

8. Conflict of Interest.

(a) In further consideration of the compensation to be paid to Executive hereunder, Executive acknowledges and agrees that during the course of Executive's employment with the Company and its Subsidiaries Executive shall become familiar with the Company's trade secrets and with other Confidential Information and that Executive's services have been and shall be of special, unique and extraordinary value to the Company and its Subsidiaries, and therefore, Executive agrees that, during his employment with the Company and for a period of one year thereafter (the "Restrictive Term"), Executive shall not directly or indirectly (whether as an owner, partner, shareholder, agent, officer, director, employee, independent contractor, consultant or otherwise) own any interest in, operate, invest in, manage, control, participate in, consult with, render services for (alone or in association with any person or entity), or in any manner engage in any business activity on behalf of a Competing Business within any geographical area in which the Company or its Subsidiaries operates or plan to operate. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as Executive has no active participation in the business of such corporation. For purposes of this paragraph, "Competing Business" means any person, entity or business in the United States of America engaged in any phase of the business of developing, manufacturing, marketing, selling, licensing or distributing of products or services that are are the same as, or are substantially similar to, or which otherwise compete with the products or services of the Company and its subsidiaries, including products or services the Company and/or its Subsidiaries have taken steps to engage in as of the date of Executive's termination of employment, (whether in the retail store channel, direct marketing or e-commerce channel or any combination of the foregoing or otherwise), including, but not limited to, any apparel business or division thereof that is engaged in the development, manufacturing, marketing, sale, licensing or distribution of plus-size apparel; provided, that the foregoing prohibition shall not apply to any such person, entity or business that competes with the Company or any of its subsidiaries through a division, subsidiary, or other business unit of such person, entity or business so long as Executive does not work or consult with or for, render any services to, or otherwise give advice to or in any manner participate or engage in any business activity on behalf of, any such division, subsidiary, or business unit that does so compete.

(b) During the Restrictive Term, Executive shall not, directly or indirectly, and shall ensure that any person or entity controlled by Executive does not, (i) induce or attempt to induce any employee of Parent, the Company or any Subsidiary to leave the employ of Parent, the Company or such Subsidiary, or in any way interfere with the relationship between the Parent, the Company or any Subsidiary and any employee thereof, (ii) hire, directly or through another person, any person (whether or not solicited) who was an executive of the Parent, the

Company or any Subsidiary at any time within the one year period before Executive's termination from employment, (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Parent, the Company or any Subsidiary to cease doing business with the Parent, the Company or any Subsidiary, engage in or assist any person or entity in engaging in any Competing Business or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Parent, the Company or any Subsidiary (Executive understands that any person or entity that Executive contacted during the one year period prior to the date of Executive's termination of employment for the purpose of soliciting sales from such person or entity shall be regarded as a "potential customer" of Parent, the Company and its Subsidiaries as to whom the Company has a protectible proprietary interest) or (iv) make or solicit or encourage others to make or solicit directly or indirectly any defamatory statement or communication about Parent, the Company or any of its Subsidiaries or any of their respective businesses, products, services or activities (it being understood that such restriction shall not prohibit truthful testimony compelled by valid legal process).

9. Enforcement.

(a) Executive acknowledges and agrees that the Company entered into this Agreement in reliance on the provisions of Sections 6, 7 and 8 and the enforcement of this Agreement is necessary to ensure the preservation, protection and continuity of the business of Parent, the Company and its Subsidiaries and other Confidential Information and goodwill of Parent, the Company and its Subsidiaries to the extent and for the periods of time expressly agreed to herein. Executive acknowledges and agrees that he has carefully read this Agreement and has given careful consideration to the restraints imposed upon Executive by this Agreement, and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information of Parent, the Company or any of its Subsidiaries now existing or to be developed in the future. Executive expressly acknowledges and agrees that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area.

(b) Notwithstanding any provision to the contrary herein, the Company or its Subsidiaries may pursue, at its discretion, enforcement of Sections 6, 7 and 8 in any court of competent jurisdiction (each a "Court").

(c) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein. More specifically, if any Court determines that any of the covenants set forth in Sections 6, 7 and 8 are overbroad or unreasonable under applicable law in duration, geographical area or scope, the parties to this Agreement specifically agree and authorize such Court to rewrite this Agreement to reflect the maximum duration, geographical area and/or scope permitted under applicable law.

(d) Because Executive's services are unique and because Executive has intimate knowledge of and access to Confidential Information and Work Product, the parties hereto agree that money damages would not be an adequate remedy for any breach of Sections 6, 7 and 8, and any breach of the terms of Sections 6, 7 and 8 would result in irreparable injury and damage to the Company and its Subsidiaries for which the Company and its Subsidiaries would have no adequate remedy at law. Therefore, in the event of a breach or threatened breach of Sections 6, 7 and 8, the Company or its successors or assigns, in addition to any other rights and remedies existing in their favor at law or in equity, shall be entitled to specific performance and/or immediate injunctive or other equitable relief from a Court in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security), without having to prove damages. The terms of this Section 9 shall not prevent the Company or any of its Subsidiaries from pursuing any other available remedies for any breach or threatened breach of this Agreement, including the recovery of damages from Executive.

10. Executive's Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. **EXECUTIVE HEREBY ACKNOWLEDGES, AGREES AND REPRESENTS THAT EXECUTIVE HAS CONSULTED WITH INDEPENDENT LEGAL COUNSEL REGARDING EXECUTIVE'S RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT AND THE TERMS OF THE RELEASE ATTACHED AS EXHIBIT A AND THAT EXECUTIVE FULLY UNDERSTANDS THE TERMS AND CONDITIONS CONTAINED HEREIN AND THEREIN**.

11. Company's Representation. The Company represents and warrants to Executive that (i) it is duly incorporated and authorized to enter into this Agreement and (ii) upon execution this Agreement will be a lawful and binding obligation of the Company.

12. Survival. The provisions of Sections 3(h) and 3(k) and Sections 5 through 23, inclusive, shall survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

13. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, sent by reputable overnight courier service with confirmation of delivery, sent by facsimile (with evidence of transmission) or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

To Executive, at the address then on file for Executive at the Company.

To the Company:

Torrid LLC
18305 East San Jose Avenue
City of Industry, California 91748
Attn: Head of Human Resources

With copies (which shall not constitute notice) to:

Sycamore Partners
9 West 57th Street
31st Floor
New York, NY 10019
Attention: Stefan Kaluzny; Dary Kopelioff
Telecopy: 212-796-8560

Kirkland & Ellis LLP
300 N. LaSalle Street
Chicago, IL 60654
Attention: James P. Faley, P.C.
Telecopy: 312-862-2200

or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when personally delivered, one (1) business day following delivery to the overnight courier service, if given by facsimile, when such facsimile is transmitted to the applicable fax number specified above and the appropriate facsimile confirmation is received, or if so mailed, on receipt.

14. Complete Agreement. This Agreement and those other documents expressly referred to herein embody the complete agreement and understanding among the parties hereto and supersede and preempt any prior understandings, agreements or representations by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

15. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective heirs, successors and assigns; provided, that the services provided by Executive under this Agreement are of a personal nature and rights and obligations of Executive under this Agreement shall not be assignable.

17. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. In furtherance of the foregoing, the internal law of the State of Delaware shall control the interpretation and construction of this Agreement, even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

18. Consent to Jurisdiction. Each of the undersigned submits to the co-exclusive jurisdiction of the United States District Court and any Delaware state court sitting in Wilmington, Delaware over any lawsuit under this Agreement and waives any objection based on venue or forum non conveniens with respect to any action instituted therein. Executive acknowledges and agrees that Executive was represented by counsel in connection with the negotiation of this Agreement, namely Preti, Flaherty, Beliveau & Pachios, Chartered, LLP. Executive acknowledges and agrees that, pursuant to Section 925 of the California Labor Code, (a) Executive has waived the application of California law to this Agreement and any disputes under this Agreement, (b) Executive has waived any right to have any disputes under this Agreement adjudicated in California, and (c) Executive acknowledges and agrees that any disputes under this Agreement shall not be deemed to be a controversy arising in California. Each of the undersigned waives the necessity for personal service of any and all process upon it and consents that all such service of process may be made by registered or certified mail (return receipt requested), in each case directed to such party in accordance with Section 13 hereof, and service so made will be deemed to be completed on the date of delivery. Each of the undersigned consents to service of process as aforesaid. Nothing in this Agreement will prohibit personal service in lieu of the service by mail contemplated herein.

19. Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

20. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company (as approved by the Board) and Executive, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement (including, without limitation, the Company's right to terminate the Employment Period for Cause) shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

21. Key Man Life Insurance. The Company may apply for and obtain and maintain a key man life insurance policy in the name of Executive together with other executives of the Company in an amount deemed sufficient by the Board, the beneficiary of which shall be the Company. Executive shall submit to physical examinations and answer reasonable questions in connection with the application and, if obtained, the maintenance of, as may reasonably be required, such insurance policy.

22. Executive's Cooperation. During the Employment Period and thereafter, Executive shall reasonably cooperate with the Company and its Subsidiaries in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the Company (including, without limitation, Executive being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into Executive's possession, all at times and on schedules that are reasonably consistent with Executive's other permitted activities and commitments). In the event the Company requires Executive's cooperation in accordance with this section after the termination of the Employment Period, the Company shall reimburse Executive for all of Executive's reasonable costs and expenses incurred, in connection therewith, plus pay Executive a reasonable amount per day for Executive's time spent.

23. Certain Tax Matters.

(a) The intent of the parties is that payments and benefits under this Agreement comply with Section 409A of the Code and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. In no event whatsoever shall the Company be liable for any additional tax, interest or penalty that may be imposed on the Executive by Section 409A of the Code or damages for failing to comply with Section 409A of the Code. To the extent that reimbursements or other in-kind benefits under this Agreement constitute "nonqualified deferred compensation" for purposes of Code Section 409A, (i) all expenses or other reimbursements hereunder shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by the Executive, (ii) any right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (iii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year. For purposes of Code Section 409A, the Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company. Notwithstanding any other provision of this Agreement to the contrary, in no event shall any payment under this Agreement that constitutes "nonqualified deferred compensation" for purposes of Code Section 409A be subject to offset by any other amount unless otherwise permitted by Code Section 409A.

(b) Notwithstanding any other provision of this Agreement to the contrary, to the extent that any payment or distribution of any type to or for Executive by the Company (or by any affiliate of the Company, any person or entity who acquires ownership or effective control of the Company or ownership of a substantial portion of the Company's assets (within the meaning of Section 280G of the Code and the regulations thereunder)), or any affiliate of such person or entity, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "Total Payments"), is or will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), then the Total Payments shall be reduced (but not below zero) if and to the extent that a reduction in the Total Payments would result in Executive retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if Executive received the entire amount of

such Total Payments. The determination of whether the Total Payments shall be reduced and the amount of such reduction shall be provided to Executive by the Company, together with detailed supporting calculations and documentation as soon as practicable following the occurrence of the relevant triggering event, and, absent manifest error, such determination shall be final and binding upon Executive and the Company. In the event a portion of the Total Payments is required to be reduced, they shall be reduced in the following order of priority in a manner consistent with Section 409A: (i) first from cash compensation that is exempt from Section 409A, (ii) next from equity compensation that is exempt from Section 409A, then (iii) from payments that are subject to Section 409A in reverse chronological order of scheduled distribution.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TORRID LLC

By: Torrid Intermediate LLC

Its: Member

By: /s/ Stefan Kaluzny
Stefan Kaluzny
Manager

ACKNOWLEDGED, ACCEPTED AND AGREED:

/s/ Marc Katz
Marc Katz

Date:

Exhibit A

GENERAL RELEASE

Date:

Exhibit B

INCENTIVE UNIT PURCHASE AGREEMENT

TORRID

May 14, 2018

Michael Salmon
via email

Re: Employment Offer and Agreement

Dear Michael,

It gives me great pleasure to present our offer of employment as a Senior Vice President, Planning and Allocation of Torrid LLC ("Torrid"). Your start date will be determined and below are the details of our offer (the "Agreement"):

Compensation. You will be paid at a bi-weekly rate of $20,192.31, which annualizes to $525,000.00. Your compensation is subject to modification during your employment in accordance with Torrid's practices and policy.

Bonus Plan. You will be eligible to participate in Torrid's Bonus Plan, as approved by the Board, beginning as of fiscal February 2018. The actual amount of bonus awarded will be based upon the Company achieving its profit performance goal, as well as you achieving performance that is meeting expectations or higher. Your bonus target will be sixty-five percent (65%) of your annualized base salary. Your 2018 bonus, under Torrid's Bonus Plan, as approved by the Board, will be pro-rated based on the number of days of actual employment. In order to receive any bonus payout you have to be actively employed on the date that bonuses are distributed.

Sign-On Bonus. You will be issued a one-time sign-on bonus of $50,000.00, which will be paid on your first pay period with Torrid. Should you voluntarily resign or if your employment is terminated for Cause (as defined herein) by Torrid within twelve (12) months of your start date; you will be responsible for repayment of such bonus, which repayment amount will be reduced by 1/12 for each month of employment.

Long-Term Incentive Package. We would like you to participate in the value you help create while you are in your role at Torrid. Subject to approval by the Torrid Board, you will be granted a long term incentive package commensurate with your role and title.

Salary Review. You will be eligible for your first salary review and consideration for a merit increase on or about April 1, 2019. Any increase awarded will be pro-rated based upon your employment start date.

Flex Time. You will accrue Flex Time Off (FTO) which will allow you to take time off from work, without having to specify a reason. FTO will accrue each pay period. Your annual FTO accrual will be one hundred and sixty hours (160) per year and you can use FTO after completing thirty (30) days of employment.

Benefits. You will be eligible to enroll in Torrid's benefits program on the first day of regular full-time employment. Your benefits will become effective on the first day of the month following 30 days of service with Torrid. This plan includes the opportunity to participate in Group Health, Dental, Vision, Life and Short- and Long-Term Disability insurance plans as well as other programs that may be available in accordance with Torrid's employee benefit programs.

401(k) Plan. You will be eligible to participate in Torrid's 401(k) Plan, if 21 years of age, after completing 200 hours of service. Employer matching program is offered with the 401(k) plan.

Deferred Compensation Plan. You are eligible to enroll in Torrid's Deferred Compensation Plan between thirty-one (31) to sixty (60) days from your start date for the current plan year, or you can wait until the next open enrollment period which will be July every year.

Relocation. Torrid will provide assistance to relocate you, your family, and your household goods to Southern California. The specific relocation benefits are included in the attached Exhibit A "Relocation Expense Agreement". Should you voluntarily resign or if your employment is terminated for Cause (as defined herein) by Torrid within twenty-four (24) months from the earlier of (i) your actual relocation date or (ii) August 31, 2019; you will be responsible for repayment of relocation expenses incurred by Torrid. You will be asked to sign the Relocation Expense Agreement acknowledging your acceptance of the terms of this relocation program prior to incurring any relocation expenses.

At-Will; Severance. This offer is not for any specific term of employment, expressed or implied. The relationship of Torrid to you shall be one of voluntary employment "at will," with no definite period of employment, regardless of the date or method of payment of wages or salary. Torrid may terminate your employment at any time and for any or no reason, with or without Cause (as defined herein), by giving written notice of such termination. Similarly, you may terminate your employment with Torrid at any time at your election, in your sole discretion, for any or no reason upon two weeks' notice to Torrid during which time you shall provide reasonable transition assistance to Torrid. Torrid reserves the right to ask you to expedite your resignation date and to leave prior to the end of the two weeks' notice period.

If Torrid terminates your employment without Cause and not due to your death or Disability (as defined herein), then you shall be eligible to receive the severance benefits described in this Section, subject to your timely satisfaction of the conditions set forth herein. Subject to your delivery to Torrid of an executed release and waiver of claims in the form attached hereto as Exhibit B or such other form as Torrid may require in order to comply with then-existing legal requirements to effect a valid release of claims (the "Release"), within the time period set forth therein, but in no event later than twenty-one days following your termination, and permitting such Release to become effective in accordance with its terms, you will receive the following severance benefits:

If your date of termination occurs within twenty-four (24) months from the earlier of (i) your actual relocation date or (ii) August 31, 2019 and if you permanently relocate back to New Jersey within 3 months after your termination date, then Torrid will provide assistance to relocate you, your family, and your household goods back to New Jersey. Such assistance will cover movement of household goods, automobile shipment and one-way airfare for your and your immediate family consistent with the comparable provisions provided in the Exhibit A Relocation Agreement.

Continued payment of your base salary in effect at the time of your termination, subject to standard payroll deductions and withholdings, for the nine (9) month period following your date of termination (such nine month period is the "Severance Period"). Such payments shall be made in substantially equal installments according to the normal payroll practices of Torrid provided however that the first installment will occur on the first payroll period following the effective date of the Release and with first such installment constituting an amount that covers all base salary that otherwise would have been paid between your termination date and such first payment. In addition, assuming you timely and accurately elect to continue your medical, dental and vision group health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of

1985 ("COBRA"), commencing with the effective date of the Release, Torrid shall pay the same percentage of the COBRA premiums for you and your qualified beneficiaries as it paid for you and your qualified beneficiaries at the time of your termination of employment until the earliest of (i) the end of the Severance Period or (ii) the expiration of your continuation coverage under COBRA and any applicable state COBRA-like statute that provides mandated continuation coverage. For purposes of this provision, references to COBRA premiums shall not include any amounts payable under a Code Section 125 health care reimbursement plan.

Notwithstanding the foregoing, if Torrid determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Internal Revenue Code of 1986, as amended (the "Code") or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then Torrid will be relieved of its obligation to make such COBRA premium payments.

If you resign or your employment is terminated for Cause or due to your death or Disability (as defined herein), all compensation and benefits will cease immediately and you will receive no additional payments from Torrid other than your accrued base salary and accrued and unused vacation benefits earned through the date of your termination.

For purposes of this Agreement, "Cause" shall mean (i) willful misconduct by you, including, but not limited to, dishonesty which materially and adversely reflects upon your ability to perform your duties for Torrid, (ii) your conviction of, or the entry of a pleading of guilty or nolo contendere by you to, any crime involving moral turpitude or any felony, (iii) fraud, embezzlement or theft against Torrid, (iv) a material breach by you of any material provision of any employment contract, assignment of inventions, confidentiality and/or nondisclosure agreement between you and Torrid, or (v) your failure to attend to your duties as assigned by the CEO of Torrid, after written notice to you and no less than a 90-day period to cure such failure provided such failure to perform is subject to cure with the passage of time.

For purposes of this Agreement, "Disability" shall mean your inability to perform your duties under this Agreement, even with reasonable accommodation, because you have become permanently disabled within the meaning of any policy of disability income insurance covering employees of Torrid then in force. In the event Torrid has no policy of disability income insurance covering employees of Torrid in force when you become disabled, the term "Disability" shall mean your inability to perform your duties under this Agreement, whether with or without reasonable accommodation, by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board, determines to have incapacitated you from satisfactorily performing all of your usual services for Torrid, with or without reasonable accommodation, for a period of at least nine (9) consecutive months during any twelve (12) month period. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Disability for purposes of this Agreement.

Returning Company Property. In the event of your termination of employment for any reason, you shall, prior to or on such termination date in the event of your resignation for any reason, or no later than five (5) days following such termination date in the event of the termination of your employment for any other reason, deliver to Torrid (and will not maintain possession of or deliver to anyone else) any and all devices, records, data, data bases software, software documentation, laboratory notebooks, notes, reports, proposals, lists, customer lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any of the above aforementioned items belonging to Torrid, its successors or assigns.

Confidential and Proprietary Information. As a condition of continued employment you agree to continue to abide by the terms of the Proprietary Information and Inventions Agreement ("PIIA") you signed upon commencement of your employment, and you recognize your recognizes that employment with the Company will involve contact with information of substantial value to Torrid, which is not generally known in the trade, and which gives Torrid an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions know how, strategies, marketing, and/or advertising plans or arrangements, developments, equipment, prototypes, sales, supplier, service provider, vendor, distributor and customer information, and business and financial information relating to the business, products, services, practices and techniques of Torrid, (hereinafter referred to as "**Confidential and Proprietary Information**"). You will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by you from whatever source and will not, either during your employment with Torrid or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use the same except on behalf of Torrid, without the prior written consent of Torrid.

Representation Regarding Proprietary Information. In your work for Torrid, you will be expected not to use or disclose any confidential information, including trade secrets, of any former employer or other person to whom you have an obligation of confidentiality. Rather, you will be expected to use only that information which is generally known and used by persons with training and experience comparable to your own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by Torrid. During our discussions about your proposed job duties, you assured us that you would be able to perform those duties within the guidelines just described. You agree that you will not bring onto Company premises any unpublished documents or property belonging to any former employer or other person to whom you have an obligation of confidentiality.

Conflict Of Interest.

(a) Loyalty. During your employment, you shall devote your full time and energies to fulfill all responsibilities to Torrid in the capacity set forth in Section 1(a).

(b) Covenant Not to Compete. During your employment, you shall not engage in competition with Torrid or any its Affiliates either directly or indirectly, in any manner or capacity, as adviser, principal, agent, affiliate, promoter, partner, officer, director, employee, stockholder, owner, co-owner, consultant, or member of any association or otherwise, in any phase of the business of developing, manufacturing and marketing of products or services that are in the same field of use or which otherwise compete with the products or services of Torrid, except with the prior written consent of the Board.

(c) Non-solicitation. During your employment, and for two (2) years immediately thereafter, (such period consisting of your employment and the two (2) year period immediately thereafter, the "Restrictive Term", you agree not to, either directly or indirectly, either for yourself or any other person or entity solicit, induce and or influence, and/or attempt to induce and/or influence, any person who is engaged as a regular, temporary, introductory, full-time or part-time employee, agent, or independent contractor by Torrid, including any employee from Torrid LLC ("Parent"), and each of its subsidiaries

("Parent Group"), to leave the employment of Torrid or Parent Group, for any reason. You shall not, directly or indirectly use Trade Secrets as defined under the California Trade Secrets Act, Cal. Civ. Code §§ 3426-3246.11, and/or the Defend Trade Secrets Act, 18 U.S.C. § 1836, et seq., to solicit, induce, or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of Torrid or Parent Group to cease doing business with Torrid or Parent Group.

Taxes and Withholding. All payments and benefits provided to you will be subject to all applicable taxes and withholdings as determined by Torrid. This agreement and its payments and benefits are intended to comply with (or be exempt from) the requirements of Code Section 409A and will be interpreted in accordance with such intention. While it is intended that all payments and benefits provided under this agreement to you will be exempt from or comply with Code Section 409A, Torrid makes no representation or covenant to ensure that the payments/benefits under this agreement are exempt from or compliant with Code Section 409A. Torrid will have no liability to you or any other person if any amounts paid or payable are subject to the additional tax and/or penalties and/or interest under Code Section 409A. For purposes of Code Section 409A, each payment made to you under this agreement will be designated as a separate payment. To the extent any nonqualified deferred compensation payment to you could be paid in one or more of your taxable years depending upon you completing certain employment-related actions, then any such payments will commence or occur in the later taxable year to the extent required by Code Section 409A.

Governing Law. This Agreement will be governed by and construed according to the laws of the State of California. You hereby expressly consent to the personal jurisdiction of the state and federal courts located in Los Angeles, California for any lawsuit filed there against you by Torrid arising from or related to this Agreement.

In the event of any litigation arising out of or relating to this Agreement, its breach or enforcement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to receive its damages, court costs, and all out-of-pocket expenses, including attorneys' fees. Such recovery shall include court costs, out-of-pocket expenses, and attorney's fees on appeal, if any.

Successors and Assigns. This Agreement will be binding upon your heirs, executors, administrators and other legal representatives and will be for the benefit of Torrid, its successors, and its assigns.

Severability. The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision, which most accurately represents the Parties' intention with respect to the invalid or unenforceable term or provision.

All plans, programs, and policies described above are subject to change at the discretion of Torrid, and all terms above are subject to the terms of the applicable Company policies. The information provided here contains a brief overview of relevant plans and is not intended to replace the legal documents that contain the complete provisions of each plan. Final interpretation of any plan is within the discretionary authority and responsibility of the plans' administrators.

Your employment with Torrid will be at-will and not for a specified period of time. It can be terminated by you or Torrid at any time, with or without cause, and with or without notice. No promises, assurances, or other conduct, whether written or oral, can modify this paragraph unless set forth in writing and signed by you and the Chief Executive Officer of Torrid LLC.

Please acknowledge acceptance of this offer of employment on the terms indicated by signing the enclosed copy of this letter and returning it to me by no later than **May 16, 2018**.

Michael, I am thrilled that you have chosen to consider our offer, and should you decide to accept, I look forward to working with you. If you have any questions, or need additional information on the plans and programs, please feel free to call Kelly McGuire Diehl at (626) 322-1433.

Sincerely,

/s/ Lawrence P. Molloy

Lawrence P. Molloy
CEO

I confirm my acceptance of employment with Torrid LLC subject to the terms and conditions set forth above.

/s/ Michael Salmon _____ 5/15/2018
Michael Salmon Date

Attachments:
Exhibit A: Relocation Expense Agreement
Exhibit B: Waiver and Release

TORRID

EXHIBIT A

RELOCATION EXPENSE AGREEMENT

TORRID

EXHIBIT B

RELEASE AND WAIVER OF CLAIMS

Exhibit 10.14

TORRID

August 9, 2019

Anne Stephenson
via email

Re: Employment Offer and Agreement

Dear Anne,

It gives me great pleasure to present our offer of employment as Chief Merchandising and Product Officer of Torrid LLC ("Torrid"). This offer is contingent on the successful completion of your background check. Your start date will be August 19, 2019 and below are the details of our offer (the "Agreement"):

Compensation. You will be paid at a bi-weekly gross rate of $23,076.93, which annualizes to a gross amount of $600,000.00, pursuant to the regular payroll dates and procedures for salaried personnel of Torrid. This will be subject to all appropriate deductions and Federal, State and Local taxes. Your compensation is subject to modification during your employment in accordance with Torrid's practices and policy. Your position is exempt from overtime compensation.

Bonus Plan. You will be eligible to participate in Torrid's Bonus Plan, as approved by the Torrid Board of Directors (the "Board"), which Plan was approved beginning as of fiscal February 2019. The actual amount of bonus awarded will be based upon Torrid achieving its profit performance goal, as well as you achieving performance that is meeting expectations or higher. Your bonus target will be sixty-five percent (65%) of your annualized base salary. Your 2019 bonus, if any, under Torrid's Bonus Plan, as approved by the Board, will be pro-rated based on the number of days of actual employment in 2019. In order to receive any bonus payout you have to be actively employed and in good standing on the date that bonuses are distributed.

Sign-On Bonus. You will be issued a one-time sign-on bonus in the gross amount of $315,000.00, which will be paid on your first pay period with Torrid. This will be subject to all appropriate deductions and Federal, State and Local taxes. Should you resign from your employment or if your employment is terminated for Cause (as defined herein) by Torrid within twelve (12) months of your start date; you will be responsible for [the pre-tax] repayment of such bonus, which repayment amount will be reduced by 1/12 for each month of employment.

Long-Term Incentive Package. We would like you to participate in the value you help create while you are in your role at Torrid. Subject to approval by and discretion of the Board, you will be granted a long term incentive package commensurate with your role and title.

Salary Review. You will be eligible for your first salary review and consideration for a merit increase on or about April 1, 2020. Any increase awarded will be pro-rated based upon your employment start date, as determined by Torrid.

Flex Time. You will accrue Flex Time Off ("FTO") pursuant to the applicable policies of Torrid, which will allow you to take time off from work, without having to specify a reason. FTO will accrue each pay period. Your annual FTO accrual will be one hundred and sixty hours (160) per year and you can use FTO after completing thirty (30) days of employment.

Benefits. You will be eligible to enroll in Torrid's benefits program on the first day of regular full-time employment. If you enroll in Torrid's benefit program, your benefits will become effective on the first day of the month following 30 days of service with Torrid. This program currently includes the opportunity to participate in Group Health, Dental, Vision, Life and Short- and Long-Term Disability insurance plans as well as other programs that may be available in accordance with the terms and conditions of Torrid's employee benefit programs (including with respect to employee contribution requirements), which may be amended or terminated from time to time by Torrid in its discretion.

401(k) Plan. You will be eligible to participate in Torrid's 401(k) Plan, if 21 years of age, after completing 200 hours of service. Employer matching program is currently offered with the 401(k) plan.

Deferred Compensation Plan. You are eligible to enroll in Torrid's Deferred Compensation Plan between thirty-one (31) to sixty (60) days from your start date for the current plan year, or you can wait until the next open enrollment period which will be July every year.

Cause. For purposes of this Agreement, "Cause" shall mean (i) willful misconduct by you, including, but not limited to, dishonesty which materially and adversely reflects upon your ability to perform your duties for Torrid, (ii) your conviction of, or the entry of a pleading of guilty or nolo contendere by you to, any crime involving moral turpitude or any felony, (iii) fraud, embezzlement or theft by you against Torrid or its affiliates, (iv) a material breach by you of any material provision of any agreement or policy, including any employment contract, assignment of inventions, confidentiality and/or nondisclosure agreement between you and Torrid or its affiliates, or (v) your failure to fulfill your duties as assigned by the CEO of Torrid, after written notice to you and no less than a 30-day period to cure such failure provided such failure to perform is subject to cure, if curable, with the passage of such 30-day period.

Returning Company Property. In the event of your termination of employment for any reason, you shall, prior to or on such termination date in the event of your resignation for any reason, or no later than five (5) days following such termination date in the event of the termination of your employment for any other reason, deliver to Torrid (and will not maintain possession of or deliver to anyone else) any and all information, documents, devices, records, data, data bases software, software documentation, laboratory notebooks, notes, reports, proposals, lists, customer lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other materials or property, or reproductions of any of the above aforementioned items belonging to Torrid or its affiliates, or their respective successors or assigns.

Confidential and Proprietary Information. As a condition of continued employment you agree to continue to abide by the terms of the Proprietary Information and Inventions Agreement ("PIIA") you will sign upon commencement of your employment, and you recognize that your employment with Torrid will involve contact with information of substantial value to Torrid, which is not generally known in the trade, and which gives Torrid an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions know how, strategies, marketing, and/or advertising plans or arrangements, developments, equipment, prototypes, sales, supplier, service provider, vendor, distributor and customer information, and business and financial information relating to the business, products, services, practices and techniques of Torrid, (hereinafter referred to as "**Confidential and Proprietary Information**"). You will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by you from whatever source and will not, either during your employment with Torrid or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use the same except on behalf of Torrid, without the prior written consent of Torrid.

Permissible Disclosures. In accordance with the Defend Trade Secrets Act, 18 U.S.C. § 1833(b), and other applicable law, nothing in this Agreement, or any other agreement or policy shall prevent

you from, or expose you to criminal or civil liability under federal or state trade secret law for, (a) directly or indirectly sharing any Torrid trade secrets or other Confidential and Proprietary Information (except information protected by any attorney-client or work product privilege) with an attorney or with any federal, state, or local government agencies, regulators, or officials, for the purpose of investigating or reporting a suspected violation of law, whether in response to a subpoena or otherwise, without notice to Torrid, or (b) disclosing trade secrets in a complaint or other document filed in connection with a legal claim, provided that the filing is made under seal. Further, nothing herein shall prevent you from discussing or disclosing information related to your general job duties. You also may disclose Confidential and Proprietary Information as required in response to a subpoena or other legal process, provided that in the event you are served with a subpoena, document request, interrogatory, or any other legal process that will or may require you to disclose any Confidential and Proprietary Information, whether during your employment or thereafter (regardless of whether you resign or your employment is terminated or the reason for such resignation or termination), you will immediately notify an officer of Torrid of such fact, in writing, and provide a copy of such subpoena, document request, interrogatory, or other legal process, unless such subpoena, document request, interrogatory, or other legal process (a) is from a court or governmental agency, and (b) explicitly prohibits you from doing so. Nothing contained in this Agreement shall be construed to prohibit you from reporting possible violations of federal or state law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any whistleblower provisions of federal or state law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

Representation Regarding Proprietary Information. In your work for Torrid, you will be required not to use or disclose any confidential information, including trade secrets, of any former employer or other person or entity to whom you have an obligation of confidentiality. Rather, you will be required to use only that information which is generally known and used by persons with training and experience comparable to your own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by Torrid. During our discussions about your proposed job duties, you assured us that you would be able to perform those duties within the guidelines just described. You agree that you will not bring onto Torrid premises any unpublished documents or property belonging to any former employer or other person or entity to whom you have an obligation of confidentiality. You further represent and warrant that your performance of the obligations under this Agreement will not conflict with or violate the terms of any agreement by which you are bound, including any post-employment covenants or obligations to any other employer, entity or person, or any order, rule, law, regulation, or other legal requirement or obligation applicable to you.

Conflict Of Interest.

(a) Loyalty. During your employment, you shall devote your full time and energies to fulfill all responsibilities to Torrid in the capacity of Chief Merchandising and Product Officer.

(b) Covenant Not to Compete. During your employment, you shall not engage in competition with Torrid or any its affiliates either directly or indirectly, in any manner or capacity, as adviser, principal, agent, affiliate, promoter, partner, officer, director, employee, stockholder, owner, co-owner, consultant, or member of any association or otherwise, in any phase of the business of developing, manufacturing and marketing of products or services that are in the same field of use or which otherwise compete with the products or services of Torrid, except with the prior written consent of the Board.

(c) Non-solicitation. During your employment, and for two (2) years immediately thereafter, (such period consisting of your employment and the two (2) year period immediately thereafter, the "Restrictive Term", you agree not to, either directly or indirectly, either for yourself or any other person or entity solicit, induce and or influence, and/or attempt to induce and/or influence, any person who is engaged as a regular, temporary, introductory, full-time or part-time employee, agent, or independent contractor by Torrid, including any employee from Torrid LLC ("Parent"), and each of its subsidiaries ("Parent Group"), to leave the employment of Torrid or Parent Group, for any reason. You shall not, directly or indirectly use Trade Secrets as defined under the California Trade Secrets Act, Cal. Civ. Code §§ 3426-3246.11, and/or the Defend Trade Secrets Act, 18 U.S.C. § 1836, et seq., to solicit, induce, or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of Torrid or Parent Group to cease doing business with Torrid or Parent Group.

Taxes and Withholding. All payments and benefits provided to you will be subject to all applicable taxes and withholdings as determined by Torrid. This agreement and its payments and benefits are intended to comply with (or be exempt from) the requirements of Code Section 409A and will be interpreted in accordance with such intention. While it is intended that all payments and benefits provided under this agreement to you will be exempt from or comply with Code Section 409A, Torrid makes no representation or covenant to ensure that the payments/benefits under this agreement are exempt from or compliant with Code Section 409A. Torrid will have no liability to you or any other person if any amounts paid or payable are subject to the additional tax and/or penalties and/or interest under Code Section 409A. For purposes of Code Section 409A, each payment made to you under this agreement will be designated as a separate payment. To the extent any nonqualified deferred compensation payment to you could be paid in one or more of your taxable years depending upon you completing certain employment-related actions, then any such payments will commence or occur in the later taxable year to the extent required by Code Section 409A.

Governing Law. This Agreement will be governed by and construed according to the laws of the State of California. You hereby expressly consent to the personal jurisdiction of the state and federal courts located in Los Angeles, California for any lawsuit filed there against you by Torrid arising from or related to this Agreement.

In the event of any litigation arising out of or relating to this Agreement, its breach or enforcement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to receive its damages, court costs, and all out-of-pocket expenses, including attorneys' fees. Such recovery shall include court costs, out-of-pocket expenses, and attorney's fees on appeal, if any.

Successors and Assigns. This Agreement will be binding upon your heirs, executors, administrators and other legal representatives and will be for the benefit of Torrid, its successors, and its assigns.

Severability. The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision, which most accurately represents the Parties' intention with respect to the invalid or unenforceable term or provision.

All plans, programs, and policies described above are subject to change at the discretion of Torrid, and all terms above are subject to the terms of the applicable policies. The information provided here contains a brief overview of relevant plans and is not intended to replace the legal documents that contain the complete provisions of each plan. Final interpretation of any plan is within the discretionary authority and responsibility of the plans' administrators.

Your employment with Torrid will be at-will and not for a specified period of time. It can be terminated by you or Torrid at any time, with or without cause, and with or without notice, provided, however, that in the event you resign from employment, you agree to provide Torrid no less than 30 days advance written notice. No promises, assurances, or other conduct, whether written or oral, can modify this paragraph unless set forth in writing and signed by you and the Chief Executive Officer of Torrid LLC.

Please acknowledge acceptance of this offer of employment on the terms indicated by signing the enclosed copy of this letter and returning it to me by no later than **August 12, 2019**.

Anne, I am thrilled that you have chosen to consider our offer, and should you decide to accept, I look forward to working with you. If you have any questions, or need additional information on the plans and programs, please feel free to call Kelly McGuire Diehl at (626) 322-1433.

Sincerely,

Elizabeth Muñoz
CEO

I confirm my acceptance of employment with Torrid LLC subject to the terms and conditions set forth above.

/s/ Anne Stephenson	August 9, 2019
Anne Stephenson	Date

TORRID HOLDINGS INC.

2021 LONG-TERM INCENTIVE PLAN

ARTICLE I

PURPOSE

The purpose of this Torrid Holdings Inc. 2021 Long-Term Incentive Plan is to promote the success of the Company's business for the benefit of its stockholders by enabling the Company to offer Eligible Individuals cash and stock-based incentives in order to attract, retain and reward such individuals and strengthen the mutuality of interests between such individuals and the Company's stockholders. The Plan is effective as of the date set forth in Article XV.

ARTICLE II

DEFINITIONS

For purposes of the Plan, the following terms shall have the following meanings:

2.1 "Affiliate" means a corporation or other entity controlled by, controlling, or under control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2.2 "Applicable Law" means the requirements relating to the administration of equity-based awards and the related shares under U.S. state corporate law, U.S. federal and state securities laws, the rules of any stock exchange or quotation system on which the shares are listed or quoted and any other applicable laws, including tax laws, of any U.S. or non-U.S. jurisdictions where Awards are, or will be, granted under the Plan.

2.3 "Award" means any award under the Plan of any Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Units, Performance Award, Other Stock-Based Award or Cash Award. All Awards shall be granted by, confirmed by, and subject to the terms of a written or electronic agreement executed by the Company and the Participant.

2.4 "Award Agreement" means the written or electronic agreement, contract, certificate, or other instrument or document evidencing the terms and conditions of an individual Award. Each Award Agreement shall be subject to the terms and conditions of the Plan.

2.5 "Board" means the Board of Directors of the Company.

2.6 "Cash Award" means an Award granted pursuant to Section 10.3 of the Plan and payable in cash at such time or times and subject to such terms and conditions as determined by the Committee in its sole discretion.

2.7 "Cause" means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant's Termination of Service, the following: (a) in the case where there is no employment agreement, offer letter, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award (or where there is such agreement in effect but it does not define "cause" (or words of like import)), the Participant's (i) commission of, or plea of guilty or no contest to, a felony or a crime involving moral turpitude or the commission of any other act involving willful malfeasance or material fiduciary breach with respect to the Company or an Affiliate; (ii) reporting to work under the influence of alcohol or illegal drugs or in the possession of illegal drugs; (iii) substantial and repeated failure to perform duties as reasonably directed by the person to whom the Participant reports; (iv) conduct that brings or is reasonably likely to bring the Company or an Affiliate negative publicity or into public disgrace, embarrassment, or disrepute; (v) gross negligence or willful misconduct with respect to the Company or an Affiliate; (vi) material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, or ethical misconduct; or (vii) any breach of any non-competition, non-solicitation, no-hire or confidentiality covenant between the Participant and the Company or an Affiliate; or (b) in the case where there is an employment agreement, offer letter, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award that defines "cause" (or words of like import), "cause" as defined under such agreement.

2.8 "Change in Control" means and includes each of the following, unless otherwise determined by the Committee in the applicable Award Agreement or other written agreement with a Participant approved by the Committee:

(a) any "person," as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of Shares), becoming the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities, excluding for purposes herein, acquisitions pursuant to a Business Combination (as defined below) that does not constitute a Change in Control as defined herein;

(b) a merger, reorganization, or consolidation of the Company or in which equity securities of the Company are issued (each, a "Business Combination"), other than a merger, reorganization or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its Parent) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, the Parent of the Company or such surviving entity) outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.8(a)) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a

Change in Control; or a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.8(a)) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control;

(c) during the period of two (2) consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in (a) or (b)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two (2) year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(d) a complete liquidation or dissolution of the Company or the consummation of a sale or disposition by the Company of all or substantially all of the Company's assets other than the sale or disposition of all or substantially all of the assets of the Company to a person or persons who beneficially own, directly or indirectly, 50% or more of the combined voting power of the outstanding voting securities of the Company at the time of the sale.

For purposes of this Section 2.8, acquisitions of securities of the Company by Sycamore Partners Management, L.P., any of its respective affiliates, or any investment vehicle or fund controlled by or managed by, or otherwise affiliated with Sycamore Partners Management, L.P. shall not constitute a Change in Control. Notwithstanding the foregoing, with respect to any Award that is characterized as "nonqualified deferred compensation" within the meaning of Section 409A of the Code, an event shall not be considered to be a Change in Control under the Plan for purposes of payment of such Award unless such event is also a "change in ownership," a "change in effective control" or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

2.9 "Change in Control Price" means the highest price per Share paid in any transaction related to a Change in Control.

2.10 "Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall also be a reference to any successor provision and any guidance and treasury regulation promulgated thereunder.

2.11 "Committee" means any committee of the Board duly authorized by the Board to administer the Plan; *provided*, *however*, that unless otherwise determined by the Board, the Committee shall consist solely of two or more Qualified Members. If no committee is duly authorized by the Board to administer the Plan, the term "Committee" shall be deemed to refer to the Board for all purposes under the Plan. The Board will retain the right to exercise the authority of the Committee to the extent consistent with Applicable Law.

2.12 "Common Stock" means the common stock, $0.01 par value per share, of the Company.

2.13 "Company" means Torrid Holdings Inc., a Delaware corporation, and its successors by operation of law.

2.14 "Consultant" means any natural person who is an advisor or consultant to the Company or its Affiliates.

2.15 "Disability" means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant's Termination of Service, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, *provided, however*, for purposes of an Incentive Stock Option, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be determined by the Committee, and the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan in which a Participant participates that is maintained by the Company or any Affiliate.

2.16 "**Dividend Equivalents**" means a right granted to a Participant under the Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

2.17 "Effective Date" means the effective date of the Plan as defined in Article XV.

2.18 "Eligible Employees" means each employee of the Company or any of its Affiliates. An employee on a leave of absence may be an Eligible Employee.

2.19 "Eligible Individual" means an Eligible Employee, Non-Employee Director or Consultant who is designated by the Committee in its discretion as eligible to receive Awards subject to the conditions set forth herein.

2.20 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.21 "Fair Market Value" means, for purposes of the Plan, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, as of any date and except as provided below, the last sales price reported for the Common Stock on the applicable date: (a) as reported on the principal national securities exchange in the United States on which it is then traded or (b) if the Common Stock is not traded, listed or otherwise reported or quoted, the Committee shall determine in good faith the Fair Market Value in whatever manner it considers appropriate taking into account the requirements of Section 409A of the Code. For purposes of the grant of any Award, the applicable date shall be the trading day immediately prior to the date on

which the Award is granted. For purposes of the exercise of any Award, the applicable date shall be the date a notice of exercise is received by the Committee or, if not a date on which the applicable market is open, the next day that it is open. Notwithstanding the foregoing, with respect to any Award granted on the pricing date of the Company's initial public offering, the Fair Market Value shall mean the initial public offering price of a Share as set forth in the Company's final prospectus relating to its initial public offering filed with the Securities and Exchange Commission.

2.22 "Family Member" means "family member" as defined in Section A.1.(a)(5) of the general instructions of Form S-8.

2.23 "Incentive Stock Option" means any Stock Option awarded to an Eligible Employee of the Company, its Subsidiaries and its Parents (if any) under the Plan and that is intended to be, and designated as, an "Incentive Stock Option" within the meaning of Section 422 of the Code.

2.24 "Non-Employee Director" means a director or a member of the Board of the Company who is not an employee of the Company.

2.25 "Non-Qualified Stock Option" means any Stock Option awarded under the Plan that is not an Incentive Stock Option.

2.26 "Other Stock-Based Award" means an Award under Article X of the Plan that is valued in whole or in part by reference to, or is payable in or otherwise based on, Shares.

2.27 "Parent" means any parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.28 "Participant" means an Eligible Individual to whom an Award has been granted pursuant to the Plan.

2.29 "Performance Award" means an Award granted to a Participant pursuant to Article IX hereof contingent upon achieving certain Performance Goals.

2.30 "Performance Goals" means goals established by the Committee as contingencies for Awards to vest and/or become exercisable or distributable.

2.31 "Performance Period" means the designated period during which the Performance Goals must be satisfied with respect to the Award to which the Performance Goals relate.

2.32 "Plan" means this Torrid Holdings Inc. 2021 Long-Term Incentive Plan, as amended from time to time.

2.33 "Qualified Member" means a member of the Board who is (a) a "non-employee director" within the meaning of Rule 16b-3(b)(3), and (b) "independent" under the listing standards or rules of the securities exchange upon which the Common Stock is traded, but only to the extent such independence is required in order to take the action at issue pursuant to such standards or rules.

2.34 "Reference Stock Option" has the meaning set forth in Section 7.1.

2.35 "Restricted Stock" means an Award of Shares under the Plan that is subject to restrictions under Article VIII.

2.36 "**Restricted Stock Units**" means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Committee to be of equal value as of such settlement date, subject to certain vesting conditions and other restrictions.

2.37 "Restriction Period" has the meaning set forth in Section 8.3(a) with respect to Restricted Stock.

2.38 "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.39 "Section 409A of the Code" means the nonqualified deferred compensation rules under Section 409A of the Code and any applicable treasury regulations and other official guidance thereunder.

2.40 "Securities Act" means the Securities Act of 1933, as amended and all rules and regulations promulgated thereunder. Reference to a specific section of the Securities Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.41 "**Shares**" means shares of Common Stock.

2.42 "Stock Appreciation Right" shall mean the right pursuant to an Award granted under Article VII.

2.43 "Stock Option" or **"Option"** means any option to purchase Shares granted to Eligible Individuals granted pursuant to Article VI.

2.44 "Subsidiary" means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.45 "Ten Percent Stockholder" means a person owning stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, its Subsidiaries or its Parent.

2.46 "Termination of Service" means the termination of the applicable Participant's employment with, or performance of services for, the Company and its Affiliates. Unless otherwise determined by the Committee, (a) if a Participant's employment or services with the Company and its Affiliates terminates but such Participant continues to provide services to the

Company and its Affiliates in a non-employee capacity, such change in status shall not be deemed a Termination of Service with the Company and its Affiliates and (b) a Participant employed by, or performing services for, a Subsidiary or an Affiliate that ceases to be an Affiliate shall also be deemed to have incurred a Termination of Service provided the Participant does not immediately thereafter become an employee of the Company or another Affiliate. Notwithstanding the foregoing provisions of this definition, with respect to any Award that constitutes a "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code, a Participant shall not be considered to have experienced a "Termination of Service" unless the Participant has experienced a "separation from service" within the meaning of Section 409A of the Code.

ARTICLE III

ADMINISTRATION

3.1 Authority of the Committee. The Plan shall be administered by the Committee. Subject to the terms of the Plan and Applicable Law, the Committee shall have full authority to grant Awards to Eligible Individuals under the Plan. In particular, the Committee shall have the authority to:

(a) determine whether and to what extent Awards, or any combination thereof, are to be granted hereunder to one or more Eligible Individuals;

(b) determine the number of Shares to be covered by each Award granted hereunder;

(c) determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder (including, but not limited to, the exercise or purchase price (if any), any restriction or limitation, any vesting schedule or acceleration thereof, or any forfeiture restrictions or waiver thereof, regarding any Award and the Shares relating thereto, based on such factors, if any, as the Committee shall determine, in its sole discretion);

(d) determine the amount of cash to be covered by each Award granted hereunder;

(e) determine whether, to what extent, and under what circumstances grants of Options and other Awards under the Plan are to operate on a tandem basis and/or in conjunction with or apart from other awards made by the Company outside of the Plan;

(f) determine whether and under what circumstances an Award may be settled in cash, Shares, other property, or a combination of the foregoing;

(g) determine whether, to what extent and under what circumstances cash, Shares or other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the Participant;

(h) modify, waive, amend, or adjust the terms and conditions of any Award, at any time or from time to time, including but not limited to Performance Goals;

(i) determine whether a Stock Option is an Incentive Stock Option or Non-Qualified Stock Option;

(j) determine whether to require a Participant, as a condition of the granting of any Award, to not sell or otherwise dispose of Shares acquired pursuant to the exercise or vesting of an Award for a period of time as determined by the Committee, in its sole discretion, following the date of the acquisition of such Award or Shares; and

(k) modify, extend or renew an Award, subject to Article XII and Section 6.4(l).

3.2 Guidelines. Subject to Article XII hereof, the Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan and perform all acts, including the delegation of its responsibilities (to the extent permitted by Applicable Law and applicable stock exchange rules), as it shall, from time to time, deem advisable; to construe and interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreements or sub-plans relating thereto); and to otherwise supervise the administration of the Plan. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or in any agreement relating thereto in the manner and to the extent it shall deem necessary to effectuate the purpose and intent of the Plan. The Committee may adopt special rules, sub-plans, guidelines and provisions for persons who are residing in or employed in, or subject to, the taxes of any domestic or foreign jurisdictions to satisfy or accommodate applicable foreign laws or to qualify for preferred tax treatment of such domestic or foreign jurisdictions.

3.3 Decisions Final. Any decision, interpretation or other action made or taken in good faith by or at the direction of the Company, the Board or the Committee (or any of its members) arising out of or in connection with the Plan shall be within the absolute discretion of all and each of them, as the case may be, and shall be final, binding and conclusive on the Company and all employees and Participants and their respective heirs, executors, administrators, successors and assigns.

3.4 Procedures. If the Committee is appointed, the Board shall designate one of the members of the Committee as chairman and the Committee shall hold meetings, subject to the by-laws of the Company, at such times and places as it shall deem advisable, including, without limitation, by telephone conference or by written consent to the extent permitted by Applicable Law. A majority of the Committee members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members. Any decision or determination reduced to writing and signed by all of the Committee members in accordance with the by-laws of the Company, shall be fully effective as if it had been made by a vote at a meeting duly called and held. The Committee shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable.

3.5 Designation of Consultants/Liability; Delegation of Authority.

(a) The Committee may designate employees of the Company and professional advisors to assist the Committee in the administration of the Plan and (to the extent permitted by Applicable Law) may grant authority to officers of the Company to grant Awards and/or execute agreements or other documents on behalf of the Committee.

(b) The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant or agent shall be paid by the Company. The Committee, its members and any person designated pursuant to sub-section (a) above shall not be liable for any action or determination made in good faith with respect to the Plan. To the maximum extent permitted by Applicable Law, no officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to the Plan or any Award granted under it.

(c) The Committee may delegate any or all of its powers and duties under the Plan to a subcommittee of directors or to any officer of the Company, including the power to perform administrative functions and grant Awards; *provided* that such delegation does not (i) violate Applicable Law, or (ii) result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company. Upon any such delegation, all references in the Plan to the "Committee," shall be deemed to include any subcommittee or officer of the Company to whom such powers have been delegated by the Committee. Any such delegation shall not limit the right of such subcommittee members or such an officer to receive Awards. The Committee may also appoint agents who are not executive officers of the Company or members of the Board to assist in administering the Plan, *provided*, *however*, that such individuals may not be delegated the authority to grant or modify any Awards that will, or may, be settled in Shares.

3.6 Indemnification. To the maximum extent permitted by Applicable Law and to the extent not covered by insurance directly insuring such person, each officer or employee of the Company or any of its Affiliates and member or former member of the Committee or the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel acceptable to the Committee) or liability (including any sum paid in settlement of a claim with the approval of the Committee), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with the administration of the Plan, except to the extent arising out of such officer's, employee's, member's or former member's own fraud or bad faith. Such indemnification shall be in addition to any right of indemnification the employees, officers, directors or members or former officers, directors or members may have under Applicable Law or under the by-laws of the Company or any of its Affiliates. Notwithstanding anything else herein, this indemnification will not apply to the actions or determinations made by an individual with regard to Awards granted to such individual under the Plan.

ARTICLE IV

SHARE LIMITATION

4.1 Shares. The aggregate number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under the Plan shall not exceed [**TBD**] Shares (subject to any increase or decrease pursuant to this Article IV), which may be either authorized and unissued Shares or Shares held in or acquired for the treasury of the Company or both. The number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under the Plan shall be subject to an annual increase on January 1 of each calendar year during the term of the Plan, equal to the lesser of (a) two percent (2%) of the aggregate number of Shares outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as is determined by the Board. The aggregate number of Shares that may be issued or used with respect to any Incentive Stock Option shall not exceed [**INSERT ABOVE SHARE RESERVE**] Shares (subject to any increase or decrease pursuant to Section 4.3). The maximum number of Shares subject to Awards granted during a single fiscal year to any Non-Employee Director, shall not exceed a total value of $500,000 (calculating the value of any Awards based on the grant date fair value for financial reporting purposes). Any Award under the Plan settled in cash shall not be counted against the foregoing maximum share limitations. Notwithstanding anything to the contrary contained herein, Shares subject to an Award under the Plan shall again be made available for issuance or delivery under the Plan if such Shares are (a) Shares tendered in payment of an Option, (b) Shares delivered or withheld by the Company to satisfy any tax withholding obligation, (c) Shares covered by a stock-settled Stock Appreciation Right or other Awards that were not issued upon the settlement of the Award or (d) Shares subject to an Award that expires or is canceled, forfeited, or terminated without issuance of the full number of Shares to which the Award related.

4.2 Substitute Awards. In connection with an entity's merger or consolidation with the Company or the Company's acquisition of an entity's property or stock, the Committee may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its Affiliate ("Substitute Awards"). Substitute Awards may be granted on such terms as the Committee deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards will not count against the overall share limit (nor shall Shares subject to a Substitute Award be added to the Shares available for Awards under the Plan as provided above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under the Plan. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grants pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided above); provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Eligible Employees or Non-Employee Directors prior to such acquisition or combination.

4.3 Adjustments.

(a) The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize (i) any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, (ii) any merger or consolidation of the Company or any Affiliate, (iii) any issuance of bonds, debentures, or preferred or prior preference stock ahead of or affecting the Shares, (iv) the dissolution or liquidation of the Company or any Affiliate, (v) any sale or transfer of all or part of the assets or business of the Company or any Affiliate or (vi) any other corporate act or proceeding.

(b) Subject to the provisions of Section 11.1:

(i) If the Company at any time subdivides (by any split, recapitalization or otherwise) the outstanding Shares into a greater number of Shares, or combines (by reverse split, combination or otherwise) its outstanding Shares into a lesser number of Shares, then the respective exercise prices for outstanding Awards that provide for a Participant-elected exercise and the number of Shares covered by outstanding Awards shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(ii) Excepting transactions covered by Section 4.3(b)(i), if the Company effects any merger, consolidation, statutory exchange, spin-off, reorganization, sale or transfer of all or substantially all the Company's assets or business, or other corporate transaction or event in such a manner that the Company's outstanding Shares are converted into the right to receive (or the holders of Common Stock are entitled to receive in exchange therefor), either immediately or upon liquidation of the Company, securities or other property of the Company or other entity, then, subject to the provisions of Section 11.1, (A) the aggregate number or kind of securities that thereafter may be issued under the Plan, (B) the number or kind of securities or other property (including cash) to be issued pursuant to Awards granted under the Plan (including as a result of the assumption of the Plan and the obligations hereunder by a successor entity, as applicable), or (C) the exercise or purchase price thereof, shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(iii) If there shall occur any change in the capital structure of the Company other than those covered by Section 4.3(b)(i) or 4.3(b)(ii), any conversion, any adjustment, or any issuance of any class of securities convertible or exercisable into, or exercisable for, any class of equity securities of the Company, then the Committee shall adjust any Award and make such other adjustments to the Plan to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(iv) The Committee may adjust the Performance Goals applicable to any Awards to reflect any unusual or non-recurring events and other extraordinary items, impact of charges for restructurings, discontinued operations, and the cumulative effects of accounting or tax changes, each as defined by generally accepted accounting principles or as identified in the Company's financial statements, notes to the financial statements, management's discussion and analysis, or other Company public filing.

(v) Any such adjustment determined by the Committee pursuant to this Section 4.3(b) shall be final, binding and conclusive on the Company and all Participants and their respective heirs, executors, administrators, successors and permitted assigns. Any adjustment to, or assumption or substitution of, an Award under this Section 4.3(b) shall be intended to comply with the requirements of Section 409A of the Code and Treasury Regulation §1.424-1 (and any amendments thereto), to the extent applicable. Except as expressly provided in this Section 4.3 or in the applicable Award Agreement, a Participant shall have no additional rights under the Plan by reason of any transaction or event described in this Section 4.3.

ARTICLE V

ELIGIBILITY

5.1 General Eligibility. All current and prospective Eligible Individuals are eligible to be granted Awards. Eligibility for the grant of Awards and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.2 Incentive Stock Options. Notwithstanding the foregoing, only Eligible Employees who are employees of the Company, its Subsidiaries or its Parent (if any) are eligible to be granted Incentive Stock Options under the Plan. Eligibility for the grant of an Incentive Stock Option and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.3 General Requirement. The vesting and exercise of Awards granted to a prospective Eligible Individual are conditioned upon such individual actually becoming an Eligible Employee, Consultant or Non-Employee Director, as applicable.

ARTICLE VI

STOCK OPTIONS

6.1 Options. Stock Options may be granted alone or in addition to other Awards granted under the Plan. Each Stock Option granted under the Plan shall be of one of two types: (a) an Incentive Stock Option or (b) a Non-Qualified Stock Option.

6.2 Grants. The Committee shall have the authority to grant to any Eligible Employee one or more Incentive Stock Options, Non-Qualified Stock Options, or both types of Stock Options; provided, however, that Incentive Stock Options may only be granted to an Eligible Employee who is an employee of the Company, its Subsidiaries or its Parents (if any). The Committee shall have the authority to grant any Consultant or Non-Employee Director one or more Non-Qualified Stock Options. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Stock Option or the portion thereof which does not so qualify shall constitute a separate Non-Qualified Stock Option.

6.3 Terms of Options. Options granted under the Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Exercise Price. The exercise price per Share subject to a Stock Option shall be determined by the Committee at the time of grant, *provided* that the per share exercise price of a Stock Option shall not be less than 100% (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, 110%) of the Fair Market Value at the time of grant.

(b) Stock Option Term. The term of each Stock Option shall be fixed by the Committee, *provided* that no Stock Option shall be exercisable more than ten (10) years (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, five (5) years) after the date the Option is granted.

(c) Exercisability. Unless otherwise provided by the Committee in accordance with the provisions of this Section 6.3, Stock Options granted under the Plan shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

(d) Method of Exercise. Subject to whatever installment exercise and waiting period provisions apply under Section 6.3(c), to the extent vested, Stock Options may be exercised in whole or in part at any time during the Option term, by giving written notice of exercise (which may be electronic) to the Company specifying the number of Shares to be purchased. Such notice shall be accompanied by payment in full of the exercise price (which shall equal the product of such number of Shares to be purchased multiplied by the applicable exercise price). The exercise price for the Stock Options may be paid upon such terms and conditions as shall be established by the Committee and set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may establish payment terms for the exercise of Stock Options pursuant to which the Company may withhold a number of Shares that otherwise would be issued to the Participant in connection with the exercise of the Stock Option having a Fair Market Value on the date of exercise equal to the exercise price, or that permit the Participant to deliver cash or Shares with a Fair Market Value equal to the exercise price on the date of payment, or through a simultaneous sale through a broker of Shares acquired on exercise, all as permitted by Applicable Law. No Shares shall be issued until payment therefor, as provided herein, has been made or provided for.

(e) Non-Transferability of Options. No Stock Option shall be transferable by the Participant other than by will or by the laws of descent and distribution, and all Stock Options shall be exercisable, during the Participant's lifetime, only by the Participant. Notwithstanding the foregoing, the Committee may determine, in its sole discretion, at the time of grant or thereafter that a Non-Qualified Stock Option that is otherwise not transferable pursuant to this Section 6.3(e) is transferable to a Family Member in whole or in part and in such circumstances, and under such conditions, as specified by the Committee. A Non-Qualified Stock Option that is transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently transferred other than by will or by the laws of descent and distribution and (ii) remains subject to the terms of the Plan and the applicable Award Agreement. Any Shares acquired upon the exercise of a Non-Qualified Stock Option by a permissible transferee of a Non-Qualified Stock Option or a permissible transferee pursuant to a transfer after the exercise of the Non-Qualified Stock Option shall be subject to the terms of the Plan and the applicable Award Agreement.

(f) Termination by Death or Disability. Unless otherwise provided in the applicable Award Agreement, or otherwise determined by the Committee at the time of grant, or if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by reason of death or Disability, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant (or in the case of the Participant's death, by the legal representative of the Participant's estate) at any time within a period of one (1) year from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options; *provided, however*, that, in the event of a Participant's Termination of Service by reason of Disability, if the Participant dies within such exercise period, all unexercised Stock Options held by such Participant shall thereafter be exercisable, to the extent to which they were exercisable at the time of death, for a period of one (1) year from the date of such death, but in no event beyond the expiration of the stated term of such Stock Options.

(g) Involuntary Termination Without Cause. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant, or if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by involuntary termination by the Company without Cause, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of ninety (90) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

(h) Voluntary Resignation. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant, or if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is voluntary (other than a voluntary termination described in Section 6.3(i) hereof), all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of ninety (90) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

(i) Termination for Cause. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant, or if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service (x) is for Cause or (y) is a voluntary Termination of Service (as provided in Section 6.3(h)) after the occurrence of an event that would be grounds for a Termination of Service for Cause, all Stock Options, whether vested or not vested, that are held by such Participant shall thereupon immediately terminate and expire as of the date of such Termination of Service.

(j) Unvested Stock Options. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant, or if no rights of the Participant are reduced, thereafter, Stock Options that are not vested as of the date of a Participant's Termination of Service for any reason shall terminate and expire as of the date of such Termination of Service.

(k) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under the Plan and/or any other stock option plan of the Company, any Subsidiary or any Parent exceeds $100,000, such Options shall be treated as Non-Qualified Stock Options. In addition, if an Eligible Employee does not remain employed by the Company, any Subsidiary or any Parent at all times from the time an Incentive Stock Option is granted until three (3) months prior to the date of exercise thereof (or such other period as required by Applicable Law), such Stock Option shall be treated as a Non-Qualified Stock Option. Should any provision of the Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may amend the Plan accordingly, without the necessity of obtaining the approval of the stockholders of the Company.

(l) Modification, Extension and Renewal of Stock Options. The Committee may (i) modify, extend or renew outstanding Stock Options granted under the Plan (provided that the rights of a Participant are not reduced without such Participant's consent and *provided*, *further* that such action does not subject the Stock Options to Section 409A of the Code without the consent of the Participant), and (ii) accept the surrender of outstanding Stock Options (to the extent not theretofore exercised) and authorize the granting of new Stock Options in substitution therefor (to the extent not theretofore exercised). Notwithstanding the foregoing, an outstanding Option may not be modified to reduce the exercise price thereof nor may a new Option at a lower price be substituted for a surrendered Option (other than adjustments or substitutions in accordance with Article IV), unless such action is approved by the stockholders of the Company.

(m) Other Terms and Conditions. The Committee may include a provision in an Award Agreement providing for the automatic exercise of a Non-Qualified Stock Option on a cashless basis on the last day of the term of such Option if the Participant has failed to exercise the Non-Qualified Stock Option as of such date, with respect to which the Fair Market Value of the Shares underlying the Non-Qualified Stock Option exceeds the exercise price of such Non-Qualified Stock Option on the date of expiration of such Option, subject to Section 14.4. Stock Options may contain such other provisions, which shall not be inconsistent with any of the terms of the Plan, as the Committee shall deem appropriate.

ARTICLE VII

STOCK APPRECIATION RIGHTS

7.1 Stock Appreciation Rights. Stock Appreciation Rights may be granted alone ("Free Standing Stock Appreciation Right") or in conjunction with all or part of any Stock Option (a "Reference Stock Option") granted under the Plan ("Tandem Stock Appreciation Rights"). In the case of a Non-Qualified Stock Option, such rights may be granted either at or after the time of the grant of such Reference Stock Option. In the case of an Incentive Stock Option, such rights may be granted only at the time of the grant of such Reference Stock Option.

7.2 Terms of Stock Appreciation Rights. Stock Appreciation Rights granted under the Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Exercise Price. The exercise price per Share subject to a Stock Appreciation Right shall be determined by the Committee at the time of grant, *provided* that the per Share exercise price of a Stock Appreciation Right shall not be less than 100% of the Fair Market Value of the Shares at the time of grant, and *provided*, *further*, that the per Share exercise price of a Tandem Stock Appreciation Right shall not be less than the per Share exercise price of the Reference Stock Option.

(b) Term. The term of each Free Standing Stock Appreciation Right shall be fixed by the Committee, but shall not be greater than ten (10) years after the date the right is granted. A Tandem Stock Appreciation Right or applicable portion thereof granted with respect to a Reference Stock Option shall terminate and no longer be exercisable upon the termination or exercise of the Reference Stock Option, except that, unless otherwise determined by the Committee, in its sole discretion, at the time of grant, a Tandem Stock Appreciation Right granted with respect to less than the full number of Shares covered by the Reference Stock Option shall not be reduced until, and then only to the extent that the exercise or termination of the Reference Stock Option causes, the number of Shares covered by the Tandem Stock Appreciation Right to exceed the number of Shares remaining available and unexercised under the Reference Stock Option.

(c) Exercisability. Unless otherwise provided by the Committee, Free Standing Stock Appreciation Rights granted under the Plan shall be exercised at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in terms of any Award Agreement upon the occurrence of a specified event. A Tandem Stock Appreciation Right shall be exercisable only at such time or times and to the extent that the Reference Stock Options to which they relate shall be exercisable in accordance with the provisions of Article VI, and shall be subject to the provisions of Section 6.3(c).

(d) Method of Exercise. Subject to whatever installment and waiting period provisions applied under Section 6.3(c), to the extent vested, a Free Standing Stock Appreciation Right may be exercised in whole or in part at any time in accordance with the applicable Award Agreement, by given written notice of exercise (which may be electronic) to the Company specifying the number of Stock Appreciation Rights being exercised. A Tandem Stock Appreciation Right may be exercised by the Participant by surrendering the applicable portion of the Reference Stock Option. Upon such exercise and surrender, the Participant shall be entitled to receive an amount determined in the manner prescribed in this Section 7.2. Stock Options which have been so surrendered, in whole or in part, shall no longer be exercisable to the extent that the related Tandem Stock Appreciation Rights have been exercised.

(e) Payment. Upon the exercise of a Free Standing Stock Appreciation Right a Participant shall be entitled to receive, for each right exercised, up to, but no more than, an amount in cash and/or Shares (as chosen by the Committee in its sole discretion) equal in value to the excess of the Fair Market Value of one (1) Share on the date that the right is exercised over the Fair Market Value of one (1) Share on the date that the right was awarded to the Participant. Upon the exercise of a Tandem Stock Appreciation Right, a Participant shall be entitled to receive up to, but no more than, an amount in cash and/or Shares (as chosen by the Committee in its sole discretion) equal in value to the excess of the Fair Market Value of one (1) Share over the Stock Option exercise price per Share specified in the Reference Stock Option Award Agreement multiplied by the number of Shares in respect of which the Tandem Stock Appreciation Right shall have been exercised, with the Committee having the right to determine the form of payment.

(f) Deemed Exercise of Reference Stock Option. Upon the exercise of a Tandem Stock Appreciation Right, the Reference Stock Option or part thereof to which such Stock Appreciation Right is related shall be deemed to have been exercised for the purpose of the limitation set forth in Article IV of the Plan on the number of Shares to be issued under the Plan.

(g) Termination. Unless otherwise determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, subject to the provisions of the applicable Award Agreement and the Plan, upon a Participant's Termination of Service for any reason, Free Standing Stock Appreciation Rights may remain exercisable following a Participant's Termination of Service on the same basis as Stock Options would be exercisable following a Participant's Termination of Service in accordance with the provisions of Sections 6.3(f) through 6.3(j).

(h) Non-Transferability. No Free Standing Stock Appreciation Rights shall not be transferable by the Participant other than by will or by the laws of descent and distribution, and all such rights shall be exercisable, during the Participant's lifetime, only by the Participant. Tandem Stock Appreciation Rights shall be transferable only when and to the extent that the underlying Stock Option would be transferable under Section 6.3(e) of the Plan.

(i) Modification, Extension, and Renewal of Stock Appreciation Rights. The Committee may (i) modify, extend or renew outstanding Stock Appreciation Rights granted under the Plan (*provided* that the rights of a Participant are not reduced without such Participant's consent and *provided*, *further*, that such action does not subject the Stock Appreciation Rights to Section 409A of the Code without the consent of the Participant), and (ii) accept the surrender of outstanding Stock Appreciation Rights (to the extent not theretofore exercised) and authorize the granting of new Stock Appreciation Rights in substitution therefor (to the extent not theretofore exercised). Notwithstanding the foregoing, an outstanding Stock Appreciation Right may not be modified to reduce the exercise price thereof nor may a new Stock Appreciation Right at a lower price be substituted for a surrendered Stock Appreciation Right (other than adjustments or substitutions in accordance with Article IV), unless such action is approved by the stockholders of the Company.

(j) Other Terms and Conditions. The Committee may include a provision in an Award Agreement providing for the automatic exercise of a Stock Appreciation Right on a cashless basis on the last day of the term of such Stock Appreciation Right if the Participant has failed to exercise the Stock Appreciation Right as of such date, with respect to which the Fair Market Value of the Shares underlying the Stock Appreciation Right exceeds the exercise price of such Stock Appreciation Right on the date of expiration of such Stock Appreciation Right, subject to Section 14.4. Stock Appreciation Rights may contain such other provisions, which shall not be inconsistent with any of the terms of the Plan, as the Committee shall deem appropriate.

ARTICLE VIII

RESTRICTED STOCK; RESTRICTED STOCK UNITS

8.1 Awards of Restricted Stock and Restricted Stock Units. Shares of Restricted Stock and Restricted Stock Units may be granted alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom, and the time or times at which, grants of Restricted Stock and/or Restricted Stock Units shall be made, the number of shares of Restricted Stock or Restricted Stock Units to be awarded, the price (if any) to be paid by the Participant (subject to Section 8.2), the time or times within which such Awards may be subject to forfeiture, the vesting schedule and rights to acceleration thereof, and all other terms and conditions of the Awards. The Committee shall determine and set forth in the Award Agreement the terms and conditions for each Restricted Stock and Restricted Stock Unit Award, subject to the conditions and limitations contained in the Plan, including any vesting or forfeiture conditions during the applicable restriction period. The Committee may condition the grant or vesting of Restricted Stock and Restricted Stock Units upon the attainment of specified performance targets (including the Performance Goals) or such other factor as the Committee may determine in its sole discretion.

8.2 Awards and Certificates. Restricted Stock and Restricted Stock Units granted under the Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Restricted Stock:

(i) Purchase Price. The purchase price of Restricted Stock shall be fixed by the Committee. The purchase price for shares of Restricted Stock may be zero to the extent permitted by Applicable Law, and, to the extent not so permitted, such purchase price may not be less than par value.

(ii) Legend. Each Participant receiving Restricted Stock shall be issued a stock certificate in respect of such shares of Restricted Stock, unless the Committee elects to use another system, such as book entries by the transfer agent, as evidencing ownership of shares of Restricted Stock. Such certificate shall be registered in the name of such Participant, and shall, in addition to such legends required by Applicable Law, bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(iii) Custody. If stock certificates are issued in respect of shares of Restricted Stock, the Committee may require that any stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed, and that, as a condition of any grant of Restricted Stock, the Participant shall have delivered a duly signed stock power or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if deemed necessary or appropriate by the Company, which would permit transfer to the Company of all or a portion of the shares subject to the Restricted Stock Award in the event that such Award is forfeited in whole or part.

(iv) Rights as a Stockholder. Except as provided in Section 8.3(a) and this Section 8.2(a) or as otherwise determined by the Committee in an Award Agreement, the Participant shall have, with respect to the shares of Restricted Stock, all of the rights of a holder of Shares, including, without limitation, the right to receive dividends, the right to vote such Shares and, subject to and conditioned upon the full vesting of shares of Restricted Stock, the right to tender such shares; *provided* that, the Award Agreement shall specify on what terms and conditions the applicable Participant shall be entitled to dividends payable on the Shares.

(v) Lapse of Restrictions. If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock, the certificates for such Shares shall be delivered to the Participant. All legends shall be removed from said certificates at the time of delivery to the Participant, except as otherwise required by Applicable Law or other limitations imposed by the Committee.

(b) Restricted Stock Units:

(i) Settlement. The Committee may provide that settlement of Restricted Stock Units will occur upon or as soon as reasonably practical after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A of the Code.

(ii) Right as a Stockholder. A Participant will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until Shares are delivered in settlement of the Restricted Stock Units.

(iii) Dividend Equivalents. If the Committee so provides, a grant of Restricted Stock Units may provide a Participant with the right to receive Dividend Equivalents. Dividend Equivalents may be paid currently or credited to an account for the Participant, settled in cash or Shares and subject to the same restrictions on transferability and forfeitability as the Restricted Stock Units with respect to which the Dividend Equivalents are granted and subject to other terms and conditions as set forth in the Award Agreement.

8.3 Restrictions and Conditions.

(a) Restriction Period.

(i) The Participant shall not be permitted to transfer shares of Restricted Stock awarded under the Plan or vest in Restricted Stock Units during the period or periods set by the Committee (the "Restriction Period") commencing on the date of such Award, as set forth in the applicable Award Agreement and such agreement shall set forth a vesting schedule and any event that would accelerate vesting of the Restricted Stock and/or Restricted Stock Units. Within these limits, based on service, attainment of Performance Goals pursuant to Section 8.3(a)(ii) and/or such other factors or criteria as the Committee may determine in its sole discretion, the Committee may condition the grant or provide for the lapse of such restrictions in installments in whole or in part, or may accelerate the vesting of all or any part of any Restricted Stock Award or Restricted Stock Unit and/or waive the deferral limitations for all or any part of any Award.

(ii) If the grant of shares of Restricted Stock or Restricted Stock Units or the lapse of restrictions or vesting schedule is based on the attainment of Performance Goals, the Committee shall establish the objective Performance Goals and the applicable vesting percentage applicable to each Participant or class of Participants in the applicable Award Agreement prior to the beginning of the applicable fiscal year or at such later date as otherwise determined by the Committee and while the outcome of the Performance Goals are substantially uncertain. Such Performance Goals may incorporate provisions for disregarding (or adjusting for) changes in accounting methods, corporate transactions (including, without limitation, dispositions and acquisitions), and other similar types of events or circumstances.

(b) Termination. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, upon a Participant's Termination of Service for any reason during the relevant Restriction Period, all Restricted Stock or Restricted Stock Units still subject to restriction will be forfeited in accordance with the terms and conditions established by the Committee at grant or thereafter.

ARTICLE IX

PERFORMANCE AWARDS

9.1 Performance Awards. The Committee may grant a Performance Award to a Participant payable upon the attainment of specific Performance Goals either alone or in addition to other Awards granted under the Plan. The Performance Goals to be achieved during the Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award. The conditions for grant or vesting and the other provisions of Performance Awards (including, without limitation, any applicable Performance Goals) need not be the same with respect to each Participant. Performance Awards may be paid in cash, Shares, other property or any combination thereof, in the sole discretion of the Committee as set forth in the applicable Award Agreement.

ARTICLE X

OTHER STOCK-BASED AND CASH AWARDS

10.1 Other Stock-Based Awards. The Committee is authorized to grant to Eligible Individuals Other Stock-Based Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, including but not limited to, Shares awarded purely as a bonus and not subject to restrictions or conditions, Shares in payment of the amounts due under an incentive or performance plan sponsored or maintained by the Company, stock equivalent units, and Awards valued by reference to book value of Shares. Other Stock-Based Awards may be granted either alone or in addition to or in tandem with other Awards granted under the Plan.

Subject to the provisions of the Plan, the Committee shall have authority to determine the Eligible Individuals, to whom, and the time or times at which, such Awards shall be made, the number of Shares to be awarded pursuant to such Awards, and all other conditions of the Awards. The Committee may also provide for the grant of Shares under such Awards upon the completion of a specified Performance Period. The Committee may condition the grant or vesting of Other Stock-Based Awards upon the attainment of specified Performance Goals as the Committee may determine, in its sole discretion.

10.2 Terms and Conditions. Other Stock-Based Awards made pursuant to this Article X shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Non-Transferability. Subject to the applicable provisions of the Award Agreement and the Plan, Shares subject to Awards made under this Article X may not be transferred prior to the date on which the Shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses.

(b) Dividends. Unless otherwise determined by the Committee at the time of the grant of an Award, subject to the provisions of the Award Agreement and the Plan, the recipient of an Award under this Article X shall not be entitled to receive, currently or on a deferred basis, dividends or Dividend Equivalents in respect of the number of Shares covered by the Award.

(c) Vesting. Any Award under this Article X and any Shares covered by any such Award shall vest or be forfeited to the extent so provided in the Award Agreement, as determined by the Committee, in its sole discretion.

(d) Price. Shares under this Article X may be issued for no cash consideration. Shares purchased pursuant to a purchase right awarded under this Article X shall be priced, as determined by the Committee in its sole discretion.

10.3 Cash Awards. The Committee may from time to time grant Cash Awards to Eligible Individuals in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by Applicable Law, as it shall determine in its sole discretion. Cash Awards may be granted subject to the satisfaction of vesting conditions or may be awarded purely as a bonus and not subject to restrictions or conditions, and if subject to vesting conditions, the Committee may accelerate the vesting of such Awards at any time in its sole discretion. The grant of a Cash Award shall not require a segregation of any of the Company's assets for satisfaction of the Company's payment obligation thereunder.

ARTICLE XI

CHANGE IN CONTROL PROVISIONS

11.1 Benefits. In the event of a Change in Control, and except as otherwise provided by the Committee in an Award Agreement, a Participant's unvested Awards shall not vest automatically and a Participant's Awards shall be treated in accordance with one or more of the following methods as determined by the Committee:

(a) Awards, whether or not then vested, shall be continued, be assumed, or have new rights substituted therefor, as determined by the Committee in a manner consistent with the requirements of Section 409A of the Code, and restrictions to which shares of Restricted Stock or any other Award granted prior to the Change in Control are subject shall not lapse upon a Change in Control and the Restricted Stock or other Award shall, where appropriate in the sole discretion of the Committee, receive the same distribution as other Shares on such terms as determined by the Committee; *provided* that the Committee may decide to award additional Restricted Stock or other Awards in lieu of any cash distribution. Notwithstanding anything to the contrary herein, for purposes of Incentive Stock Options, any assumed or substituted Stock Option shall comply with the requirements of Treasury Regulation Section 1.424-1 (and any amendment thereto).

(b) The Committee, in its sole discretion, may provide for the purchase of any Awards by the Company for an amount of cash equal to the excess (if any) of the Change in Control Price of the Shares covered by such Awards, over the aggregate exercise price of such Awards; *provided, however*, that if the exercise price of an Option or Stock Appreciation Right exceeds the Change in Control Price, such Award may be cancelled for no consideration.

(c) The Committee may, in its sole discretion, terminate all outstanding and unexercised Stock Options, Stock Appreciation Rights, or any Other Stock-Based Award that provides for a Participant-elected exercise, effective as of the date of the Change in Control, by delivering notice of termination to each Participant at least twenty (20) days prior to the date of consummation of the Change in Control, in which case during the period from the date on which such notice of termination is delivered to the consummation of the Change in Control, each such Participant shall have the right to exercise in full all of such Participant's Awards that are then outstanding (without regard to any limitations on exercisability otherwise contained in the Award Agreements), but any such exercise shall be contingent on the occurrence of the Change in Control, and, *provided* that, if the Change in Control does not take place within a specified period after giving such notice for any reason whatsoever, the notice and exercise pursuant thereto shall be null and void.

(d) Notwithstanding any other provision herein to the contrary, the Committee may, in its sole discretion, provide for accelerated vesting or lapse of restrictions, of an Award at any time.

ARTICLE XII

TERMINATION OR AMENDMENT OF PLAN

Notwithstanding any other provision of the Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of the Plan (including any amendment deemed necessary to ensure that the Company may comply with any Applicable Law), or suspend or terminate it entirely, retroactively or otherwise; *provided, however*, that, unless otherwise required by Applicable Law or specifically provided herein, the rights of a Participant with respect to Awards granted prior to such amendment, suspension or termination, may not be impaired without the consent of such Participant and, *provided further*, that without the approval of the holders of the Shares entitled to vote in accordance with Applicable Law, no amendment may be made that would (i) increase the aggregate number of Shares that may be issued under the Plan (except by operation of Article IV); (ii) change the classification of individuals eligible to receive Awards under the Plan; (iii) reduce the exercise price of any Stock Option or Stock Appreciation Right; (iv) grant a new Stock Option, Stock

Appreciation Right or other Award in substitution for, or upon the cancellation of, any previously granted Stock Option or Stock Appreciation Right that has the effect of reducing the exercise price thereof; (v) exchange any Stock Option or Stock Appreciation Right for Common Stock, cash or other consideration when the exercise price per Share under such Stock Option or Stock Appreciation Right exceeds the Fair Market Value of a Share; or (vi) take any other action that would be considered a "repricing" of a Stock Option or Stock Appreciation Right under the applicable listing standards of the national exchange on which the Common Stock is listed (if any). Notwithstanding anything herein to the contrary, the Board or the Committee may amend the Plan or any Award Agreement at any time without a Participant's consent to comply with Applicable Law, including Section 409A of the Code. The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Article IV or as otherwise specifically provided herein, no such amendment or other action by the Committee shall impair the rights of any holder without the holder's consent.

ARTICLE XIII

UNFUNDED STATUS OF PLAN

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payment as to which a Participant has a fixed and vested interest but which is not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any right that is greater than those of a general unsecured creditor of the Company.

ARTICLE XIV

GENERAL PROVISIONS

14.1 Legend. The Committee may require each person receiving Shares pursuant to a Stock Option or other Award under the Plan to represent to and agree with the Company in writing that the Participant is acquiring the Shares without a view to distribution thereof. In addition to any legend required by the Plan, the certificates for such Shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer. All certificates for Shares delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed or any national securities exchange system upon whose system the Common Stock is then quoted, and any Applicable Law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If the Shares are held in book-entry form, then the book-entry will indicate any restrictions on such Shares.

14.2 Other Plans. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and such arrangements may be either generally applicable or applicable only in specific cases.

14.3 No Right to Employment/Directorship/Consultancy. Neither the Plan nor the grant of any Award hereunder shall give any Participant or other employee, Consultant or Non-Employee Director any right with respect to continuance of employment, consultancy or directorship by the Company or any Affiliate, nor shall there be a limitation in any way on the right of the Company or any Affiliate by which an employee is employed or a Consultant or Non-Employee Director is retained to terminate such employment, consultancy or directorship at any time.

14.4 Withholding of Taxes. A Participant shall be required to pay to the Company or one of its Affiliates, as applicable, or make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of an Award. The Committee may (but is not obligated to), in its sole discretion, permit or require a Participant to satisfy, all or any portion of the applicable taxes that are required to be withheld with respect to an Award by (a) the delivery of Shares (which are not subject to any pledge or other security interest) that have been both held by the Participant and vested for at least six (6) months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment under applicable accounting standards) having an aggregate Fair Market Value equal to such withholding liability (or portion thereof); (b) having the Company withhold from the Shares otherwise issuable or deliverable to, or that would otherwise be retained by, the Participant upon the grant, exercise, vesting or settlement of the Award, as applicable, a number of Shares with an aggregate Fair Market Value equal to the amount of such withholding liability; or (c) by any other means specified in the applicable Award Agreement or otherwise determined by the Committee.

14.5 Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, additional Awards or other securities or property shall be used or paid in lieu of fractional Shares or whether any fractional shares should be rounded, forfeited or otherwise eliminated.

14.6 No Assignment of Benefits. No Award or other benefit payable under the Plan shall, except as otherwise specifically provided by law or permitted by the Committee, be transferable in any manner, and any attempt to transfer any such benefit shall be void, and any such benefit shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person who shall be entitled to such benefit, nor shall it be subject to attachment or legal process for or against such person.

14.7 Clawback Provisions. All Awards (including any proceeds, gains or other economic benefit the Participant actually or constructively receives upon receipt or exercise of any Award or the receipt or resale of any Shares underlying the Award) will be subject to any Company clawback policy, including any clawback policy adopted to comply with Applicable Laws (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder) as set forth in such clawback policy or the Award Agreement.

14.8 Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issuance of Shares pursuant to an Award shall be conditioned upon such Shares being listed on such exchange or system. The Company shall have no obligation to issue such shares unless and until such Shares are so listed, and the right to exercise any Option or other Award with respect to such Shares shall be suspended until such listing has been effected.

(b) If at any time counsel to the Company shall be of the opinion that any sale or delivery of Shares pursuant to an Award is or may in the circumstances be unlawful or result in the imposition of excise taxes on the Company under Applicable Law, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise, with respect to Shares or Awards, and the right to exercise any Option or other Award shall be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 14.8, any Award affected by such suspension which shall not then have expired or terminated shall be reinstated as to all Shares available before such suspension and as to Shares which would otherwise have become available during the period of such suspension, but no such suspension shall extend the term of any Award.

(d) A Participant shall be required to supply the Company with certificates, representations and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent or approval the Company deems necessary or appropriate.

14.9 Governing Law. The Plan and actions taken in connection herewith shall be governed and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

14.10 Construction. Wherever any words are used in the Plan in the masculine gender they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

14.11 Other Benefits. No Award granted or paid out under the Plan shall be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Affiliates or affect any benefit or compensation under any other plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

14.12 Costs. The Company shall bear all expenses associated with administering the Plan, including expenses of issuing Shares pursuant to Awards hereunder.

14.13 No Right to Same Benefits. The provisions of Awards need not be the same with respect to each Participant, and such Awards to individual Participants need not be the same in subsequent years.

14.14 Death/Disability. The Committee may in its discretion require the transferee of a Participant to supply it with written notice of the Participant's death or Disability and to supply it with a copy of the will (in the case of the Participant's death) or such other evidence as the Committee deems necessary to establish the validity of the transfer of an Award. The Committee may also require the agreement of the transferee to be bound by all of the terms and conditions of the Plan.

14.15 Section 16(b) of the Exchange Act. It is the intent of the Company that the Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 as promulgated under Section 16 of the Exchange Act so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of the Plan would conflict with the intent expressed in this Section 14.15, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

14.16 Deferral of Awards. The Committee may establish one or more programs under the Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Participant to payment or receipt of Shares or other consideration under an Award. The Committee may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Committee deems advisable for the administration of any such deferral program.

14.17 Section 409A of the Code. The Plan and Awards are intended to comply with or be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. To the extent that any Award is subject to Section 409A of the Code, it shall be paid in a manner that will comply with Section 409A of the Code, including proposed, temporary or final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Notwithstanding anything herein to the contrary, any provision in the Plan that is inconsistent with Section 409A of the Code shall be deemed to be amended to comply with or be exempt from Section 409A of the Code and to the extent such provision cannot be amended to comply therewith or be exempt therefrom, such provision shall be null and void. The Company shall have no liability to a Participant, or any other party, if an Award that is intended to be exempt from, or compliant with, Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee or the Company and, in the event that any amount or benefit under the Plan becomes subject to penalties under Section 409A of the Code, responsibility for payment of such penalties shall rest solely with the affected Participants and not with the Company. Notwithstanding any contrary provision in the Plan or Award Agreement, any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) that are otherwise required to be made under the Plan to a "specified employee" (as defined under Section 409A of the Code) as a result of such employee's separation from service (other than a payment that is not subject to Section 409A of the Code) shall be delayed for the first six (6) months following such separation from service (or, if earlier, until the date of death of the specified employee) and shall instead be paid (in a manner set forth in the Award Agreement) upon expiration of such delay period.

14.18 Successor and Assigns. The Plan shall be binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator or trustee of such estate.

14.19 Severability of Provisions. If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions had not been included.

14.20 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

ARTICLE XV

EFFECTIVE DATE OF PLAN

The Plan shall become effective on June 22, 2021, which is the date of its adoption by the Board, subject to the approval of the Plan by the stockholders of the Company in accordance with the requirements of the laws of the State of Delaware.

ARTICLE XVI

TERM OF PLAN

No Award shall be granted pursuant to the Plan on or after the tenth (10th) anniversary of the earlier of the date that the Plan is adopted or the date of stockholder approval, but Awards granted prior to such tenth (10th) anniversary may extend beyond that date.

Exhibit 10.16

Execution Version

$350,000,000.00

CREDIT AGREEMENT

Dated as of June 14, 2021

among

TORRID INTERMEDIATE, LLC,
as Holdings,

TORRID LLC,
as Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent

and

THE OTHER LENDERS PARTY HERETO

BOFA SECURITIES, INC.,
MORGAN STANLEY SENIOR FUNDING, INC.,
GOLDMAN SACHS BANK USA and
KKR CAPITAL MARKETS LLC
as Joint Lead Arrangers and Joint Lead Bookrunners

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this "**Agreement**") is entered into as of June 14, 2021, by and among TORRID INTERMEDIATE, LLC, a Delaware limited liability company ("**Holdings**"), TORRID LLC, a California limited liability company and direct subsidiary of Holdings (the "**Borrower**"), BANK OF AMERICA, N.A. ("**Bank of America**"), as administrative agent (in such capacity, including any successor thereto, the "**Administrative Agent**") and as collateral agent (in such capacity, including any successor thereto, the "**Collateral Agent**") under the Loan Documents, and each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**").

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders make available on the Closing Date to the Borrower up to $350,000,000.00 of Closing Date Term Loans, on the terms and subject to the conditions set forth herein, the proceeds of which will be used for the purposes set forth in Section 6.14.

Concurrently herewith, the Borrower is entering into an amendment to the ABL Credit Agreement to affect the amendments set forth therein.

The proceeds of the Loans, together with the proceeds provided under the ABL Credit Agreement and cash on hand, will be used (A) to consummate the Closing Date Refinancing on the Closing Date, (B) to pay the Transaction Expenses and (C) to fund the Closing Date Distribution on or about the Closing Date.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

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

"**ABL Commitments**" means "Commitments" as defined in the ABL Facility.

"**ABL Credit Agreement**" means the Amended and Restated Credit Agreement dated as of October 23, 2017, among Holdings (as successor to Torrid Inc., a Delaware corporation), the Borrower, the ABL Facility Administrative Agent and the several banks and other financial institutions from time to time parties thereto, as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of June 14, 2019, that certain Second Amendment to Amended and Restated Credit Agreement, dated as of September 4, 2019, and as such agreement may be further amended, supplemented, waived or otherwise modified from time to time, in each case to the extent permitted hereunder and under the ABL Intercreditor Agreement and any Refinancing Indebtedness thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Credit Agreement).

"**ABL Event of Default**" means "Event of Default" as set forth in the ABL Credit Agreement.

"**ABL Facility**" means the collective reference to the ABL Credit Agreement, any ABL Loan Document, any notes and letters of credit issued pursuant thereto and any guarantee, security agreement, patent, trademark or copyright security agreements, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time, in each case to the extent permitted hereunder and under the ABL Intercreditor Agreement and any Refinancing Indebtedness thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Facility).

"**ABL Facility Administrative Agent**" means Bank of America, in its capacity as administrative agent under the ABL Credit Agreement or any successor agent under the ABL Loan Documents.

"**ABL Financial Covenant**" means the covenant set forth in Section 7.15 of the ABL Credit Agreement.

"**ABL Intercreditor Agreement**" means the ABL Intercreditor Agreement substantially in the form of Exhibit G-1 among the Collateral Agent, Bank of America, as collateral agent under the ABL Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**ABL Lenders**" means "Lenders" under the ABL Credit Agreement.

"**ABL Loan Documents**" means, collectively, (i) the ABL Credit Agreement and (ii) the security documents, intercreditor agreements (including the ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the ABL Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Refinancing Indebtedness of the ABL Facility.

"**ABL Obligations**" means "Obligations" as defined in the ABL Facility.

"**Acceptable Discount**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acceptable Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Acceptance and Prepayment Notice**" means a notice of the Borrower's acceptance of the Acceptable Discount in substantially the form of Exhibit M.

"**Acceptance Date**" has the meaning specified in Section 2.05(1)(e)(D)(2).

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Acquisition Debt**" has the meaning set forth in Section 7.02(b)(14)(b).

"**Additional Lender**" means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Term Loan in accordance with Section 2.14, (b) Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (c) Replacement Loans pursuant to Section 10.01; *provided* that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed), in each case, solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender.

"**Adjusted EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h) and (l)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of "Consolidated Interest Expense" pursuant to the definition thereof; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations), and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash expenses, charges, expenses, losses or items (including any write-offs or write-downs) reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Subsidiary deducted (and not added back) in such period to Consolidated Net Income, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreement or otherwise to the extent otherwise permitted under Section 6.19 and (ii) the amount of payments made to option holders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to shareholders of such Person or its Parent Companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

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

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Adjusted EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Adjusted EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interest of such Person (other than Disqualified Stock); *plus*

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

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus*

(l) (I) pro forma "run rate" cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to acquisitions, dispositions and other specified transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are expected to be taken within eight fiscal quarters after the date of consummation of such acquisition, disposition or other specified transaction or the initiation of such restructuring initiative, cost savings initiative or other initiatives and (II) pro forma "run rate" cost savings, operating expense reductions and synergies (in each case, net of amounts actually realized) related to the Transactions that are reasonably identifiable and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within eight fiscal quarters after the Closing Date (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken); *plus*

(m) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus*

(n) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives and operating expense reductions, restructuring and similar charges, severance, relocation costs, integration and facilities and opening costs and other business optimization expenses, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of facilities, stores and curtailments or modifications to pension and post-retirement employee benefits plans (including any settlement of pension liabilities); *plus*

(o) expenses, charges or losses in connection with any single or one-time event, including, without limitation, in connection with the Acquisition and/or any acquisition consummated after the Closing Date (including, without limitation, legal, accounting and other professional fees and expenses incurred in connection with acquisitions and other investments made prior to or following the Closing Date); *plus*

(p) (x) adjustments, exclusions and add-backs of the type reflected in the Sponsor's model delivered to the Arrangers on May 14, 2021 and (y) adjustments, exclusions and add-backs of the type reflected in any other quality of earnings analysis prepared by independent registered public accountants of recognized national standing (or any other accounting firm reasonably acceptable to the Administrative Agent) delivered by the Sponsor to the Administrative Agent in connection with Permitted Acquisitions or other Investments after the Closing Date and (z) adjustments consistent with Regulation S-X; *plus*

(q) pro forma adjustments to include the net income of Persons, assets or other lines of business that will be acquired pursuant to a Permitted Acquisition or other similar Investment permitted hereunder for which definitive agreements have been entered into during such period and which have not been consummated as of the relevant date of determination; *plus*

(r) if such period includes the results of new or remodeled stores, whether opened or remodeled prior to the Closing Date or after the Closing Date, which have been open or remodeled for less than 24 months, the "run rate" pro forma impact of Consolidated EBITDA expected to be generated by any such new or remodeled store (net of any realized amounts) on the 36 month-anniversary following the opening or remodeling of such new store, as applicable; *plus*

(s) pre-opening expenses and "start-up costs" (as determined by the Borrower) related to the acquisition, opening, organizing and entering into of any new stores and all other locations incurred prior to the first day the new stores or locations are determined to be open for business (as determined by the Borrower) and costs associated with upgrading, remodeling or construction of new locations or stores;

provided that, the aggregate amount of adjustments to Adjusted EBITDA pursuant to the preceding clauses (l), (n), (o), (p)(y), (q) and (r), taken together with the aggregate amount of adjustments pursuant to Section 1.07(3), shall not exceed 25% of Adjusted EBITDA for any period (calculated after giving effect to such adjustments set forth in Adjusted EBITDA); and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Adjusted EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Adjusted EBITDA in accordance with this definition), and

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned subsidiary added (and not deducted in such period from Consolidated Net Income).

Adjusted EBITDA of the Borrower and its Restricted Subsidiaries will be deemed to equal (i) $34.2 million for the fiscal quarter ended August 1, 2020, (ii) $30.8 million for the fiscal quarter ended October 31, 2020, (iii) $44.0 million for the fiscal quarter ended January 30, 2021 and (iv) $73.0 million for the fiscal quarter ended May 1, 2021, in each case and, without duplication, adjusted to reflect any *pro forma* adjustments with respect to any relevant Specified Transaction as are appropriate and consistent with the *pro forma* adjustment provisions set forth in Section 1.07, in each case, occurring or identified after the Closing Date and not otherwise included in the calculation of the foregoing amounts; *provided* that, for the avoidance of doubt, such deemed Adjusted EBITDA numbers shall not change following delivery of the financials relating to the fiscal quarter ended May 1, 2021 pursuant to Section 6.01(2).

"**Adjusted Eurodollar Rate**" means, with respect to any Borrowing of Eurodollar Rate Loans for any Interest Period, an interest rate per annum equal to the Eurodollar Rate based on clause (a) of the definition of "Eurodollar Rate" for such Interest Period multiplied by the Statutory Reserve Rate; *provided* that, notwithstanding the foregoing, the "Adjusted Eurodollar Rate" shall in no event be less than 0.75% per annum with respect to the Closing Date Term Loans. The Adjusted Eurodollar Rate will be adjusted automatically as to all Borrowings of Eurodollar Rate Loans then outstanding as of the effective date of any change in the Statutory Reserve Rate.

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

"**Administrative Agent's Office**" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

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

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Affiliate Transaction**" has the meaning specified in Section 6.19.

"**Affiliated Lender**" means, at any time, any Lender that is the Sponsor or an Affiliate of the Sponsor or an Affiliate of the Borrower (other than (a) any Loan Party or any Subsidiary, (b) any Debt Fund Affiliate or (c) any natural person) at such time.

"**Affiliated Lender Assignment and Assumption**" has the meaning specified in Section 10.07(h)(v).

"**Affiliated Lender Cap**" has the meaning specified in Section 10.07(h)(iv).

"**After Year-End Investment**" has the meaning specified in Section 2.05(2).

"**After Year-End Payment**" has the meaning specified in Section 2.05(2).

"**Agency Fee Letter**" means that certain Agency Fee Letter, dated as of May 19, 2021, by and among the Borrower, Bank of America and BofA Securities, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Agent Parties**" has the meaning specified in Section 10.02(4).

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

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

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

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

"**Agreement Currency**" has the meaning specified in Section 10.26.

"**AHYDO Payment**" means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Code Section 163(i).

"**All-In Yield**" means, with respect to any term loan facility or other term loans, as of any date of determination, the sum of (i) the higher of (A) the Adjusted Eurodollar Rate on such date for a deposit in Dollars with a maturity of three months and (B) the Adjusted Eurodollar Rate "floor," if any, with respect thereto as of such date, (ii) the Applicable Rate (or other applicable margin) as of such date for Eurodollar Rate Loans (or other loans that accrue interest by reference

to a similar reference rate) and (iii) the amount of OID and upfront fees thereon (converted to yield assuming a four-year average life and without any present value discount), but excluding (x) any arrangement, commitment, structuring, underwriting, ticking, unused line fees and/or amendment fees (regardless of whether any such fees are paid to or shared in whole or in part with any Lender) and (ii) any other fee that is not paid by the Borrower generally to all relevant Lenders ratably; *provided* that the amounts set forth in clauses (i) and (ii) above for any term loans that are not incurred under this Agreement shall be based on the stated interest rate basis for such term loans.

"**Applicable Discount**" has the meaning specified in Section 2.05(1)(e)(C)(2).

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

"**Applicable Intercreditor Agreement**" means (a) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that (i) are intended to rank equal in priority to the Liens on the ABL Priority Collateral (as defined in the ABL Intercreditor Agreement) securing the ABL Obligations and (ii) are intended to rank junior in priority to the Liens on the Term Priority Collateral (as defined in the ABL Intercreditor Agreement) securing the Obligations, the ABL Intercreditor Agreement, (b) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank equal in priority to the Liens on the Collateral securing the Obligations (but without regard to control of remedies), each of the ABL Intercreditor Agreement, the Term Intercreditor Agreement (if applicable) and the Pari Passu Intercreditor Agreement, (c) to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank junior in priority to the Liens on the Collateral securing the Obligations or equal in priority to the Liens on the Collateral securing the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement), the Term Intercreditor Agreement and the ABL Intercreditor Agreement and (d) to the extent executed in connection with any incurrence of Indebtedness secured by Liens on the Collateral that are intended to rank junior in priority to the Liens securing the Obligations and the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement), a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Liens on the Collateral securing the Obligations and the Junior Priority Debt Obligations (as defined in the Term Intercreditor Agreement).

"**Applicable Rate**" means a percentage per annum equal to:

(a) with respect to Closing Date Term Loans, a percentage per annum equal to (x) for Eurodollar Rate Loans, 5.50% and (y) for Base Rate Loans, 4.50%.

(b) with respect to any Term Loans (other than Closing Date Term Loans), as specified in the applicable Incremental Amendment, Extension Amendment, Refinancing Amendment or amendment in respect of Replacement Loans.

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

"**Approved Commercial Bank**" means a commercial bank with a consolidated combined capital and surplus of at least $5,000,000,000.

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

"**Arrangers**" means BofA Securities, Morgan Stanley, Goldman Sachs, and KCM, each in its capacity as a joint lead arranger and joint lead bookrunner under this Agreement.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer or other disposition (including Sale-Leaseback Transactions and whether effected pursuant to a Division or otherwise), whether in a single transaction or a series of related transactions of property or assets of the Borrower or any Restricted Subsidiary (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02 and directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and

(v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of any assets by the Borrower or any Restricted Subsidiary in a manner permitted pursuant to Section 7.03;

(c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or any acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value of less than (i) $10.0 million for any individual transaction or series of related transactions and (ii) $20.0 million for all such transactions in any fiscal year (with any unused capacity being carried forward and applied to increase this basket in subsequent fiscal years);

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary to the extent otherwise permitted hereunder;

(f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

(h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary;

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited hereunder;

(j) the sale, conveyance, transfer or other disposition of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date, including asset securitizations permitted hereunder;

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sublicensing of IP Rights or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse or abandonment of IP Rights, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property;

(v) dispositions and transfers of property in connection with any Sale-Leaseback Transactions;

(w) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction;

(x) dispositions on the Closing Date in connection with the Transactions;

(y) other dispositions in an aggregate amount not to exceed the greater of (i) $20.0 million and (ii) 12.5% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto in any fiscal year with unused amounts in any fiscal year being carried forward to the immediately succeeding fiscal year.

"**Assignee Group**" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"**Assignment and Assumption**" means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

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

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

"**Auction Agent**" means (a) the Administrative Agent or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(1)(e); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided further* that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

"**Audited Financial Statements**" means an audited balance sheet of the Borrower and its consolidated Subsidiaries as of on or about February 2, 2021, and the related audited statements of income and cash flows for the Borrower and its Subsidiaries for the fiscal year ending on or about February 2, 2021.

"**Available Amount**" means, at any time (the "**Available Amount Reference Time**"), an amount (which shall not be less than zero) equal to the sum of:

(1) the greater of (x) $85.0 million and (y) 50.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries computed on a *pro forma* basis in accordance with Section 1.07 for the most recently ended Test Period as of such time; plus

(2) the Retained Excess Cash Flow Amount; *provided* that this clause (2) (other than uses pursuant to Section 7.02(34) and clause (52) of the definition of "Permitted Liens") shall only be available for use if the Total Net Leverage Ratio for the Test Period immediately preceding such usage would be no greater than 2.00 to 1.00 after giving pro forma effect thereto; plus

(3) the amount of any common capital contributions (including mergers or consolidations that have a similar effect), Net Proceeds from any Permitted Equity Issuance (or issuance of debt securities that have been converted into or exchanged for Qualified Equity Interests) or Net Proceeds contributed to the Borrower following the consummation of a Qualifying IPO plus the fair market value of any Cash Equivalents and the fair market value of any assets received by the Borrower or such Restricted Subsidiary upon conversion or exchange, other than (w) the amount of any Specified Equity Contribution, (x) any capital contributions (including mergers or consolidations that have a similar effect) or equity or debt issuances to the extent utilized in connection with other transactions permitted pursuant to Section 7.02 and Section 7.05) received by or made to the Borrower (or any direct or indirect parent thereof and contributed by such parent to the Borrower), (y) [reserved] (z) any non-cash capital contributions (including mergers or consolidations that have a similar effect), in each case, during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; plus

(4) the cash proceeds of any Disqualified Stock of the Borrower and any of its Restricted Subsidiaries issued after the Closing Date (other than Disqualified Stock issued to the Borrower or any of its Restricted Subsidiaries), which has been converted into or exchanged for Capital Stock of the Borrower, any Restricted Subsidiary or any Parent Company that does not constitute Disqualified Stock, in each case, during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; plus

(5) the Net Proceeds received by the Borrower or any Restricted Subsidiary from any Permitted Investments made with the Available Amount plus returns, profits, distributions and similar amounts received in cash or Cash Equivalents (and non-cash returns, profits, distributions and similar amounts immediately following the Closing Date through and including the Available Amount Reference Time in an amount not in excess of the fair market value thereof at the time of such distribution) by the Borrower and its Restricted Subsidiaries from Permitted Investments made with the Available Amount; plus

(6) the aggregate amount of Declined Proceeds during the period from the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; plus

(7) the amount of any Permitted Investments by the Borrower or any Restricted Subsidiary in any Unrestricted Subsidiary with the Available Amount that has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or is liquidated, would up or dissolved into, the Borrower or any Restricted Subsidiary in an amount not to exceed the lesser of (A) the fair market value (as reasonably determined by the Borrower in good faith) of the original amount of such Investment and (B) the fair market value (as reasonably determined by the Borrower in good faith) of the property or assets of any Unrestricted Subsidiary that have been transferred, conveyed or otherwise distributed to the Borrower or any Restricted Subsidiary, in each case, during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; plus

(8) the fair market value of Term Loans *plus* all accrued and unpaid interest thereon contributed by any Affiliated Lender to the Borrower for cancellation and extinguishment pursuant to Section 10.07(h); *provided* that, the fair market value of such Term Loans shall not exceed par and, if the fair market value of such Term Loans cannot be ascertained by the Borrower, the fair market value shall be deemed to be the purchase price of such Term Loans paid by such Affiliated Lender; minus

(9) the aggregate amount of Restricted Payments made with the Available Amount pursuant to clause (10)(Y) of Section 7.05(b) (net of any return of capital in respect of any Investments or deemed reduction in the amount of such Investment, including, without limitation, upon the redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary or the sale, transfer, lease or other disposition of any such Investments), during the period commencing on the Closing Date through and including the Available Amount Reference Time (and, for purposes of this clause (8), without taking account of the intended usage of the Available Amount at such Available Amount Reference Time).

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

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

"**Bail-In Legislation**" means:

(a) in relation 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 of America**" means Bank of America, N.A.

"**Bankruptcy Code**" has the meaning specified in Section 8.02.

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* ½ of 1.00%, (b) the Prime Rate in effect for such day and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that, notwithstanding the foregoing, the "Base Rate" shall in no event be less than 1.75% per annum with respect to the Closing Date Term Loans.

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

"**Basket**" means any amount, threshold or other value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

"**Benchmark**" means, initially, the Adjusted Eurodollar Rate; *provided* that if a replacement of the Benchmark has occurred pursuant to Section 3.03 then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"**Benchmark Replacement**" means:

(1) For purposes of Section 3.03(1), the first alternative set forth below that can be determined by the Administrative Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months' duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);

provided that, if initially the Adjusted Eurodollar Rate is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

(2) For purposes of Section 3.03(2), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 0.75%, the Benchmark Replacement will be deemed to be 0.75% for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of 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 Transition Event**" means, with respect to any then-current Benchmark other than the Eurodollar Rate, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, *provided* that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

"**Board of Directors**" means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of Holdings or the Borrower, as the context may require.

"**BofA Securities**" means BofA Securities, Inc.

"**Borrower**" means (a) Torrid LLC, a California limited liability company and (b) upon the consummation of any transaction permitted by Section 7.03(4), the Successor Borrower.

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

"**Borrower Offer of Specified Discount Prepayment**" means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

"**Borrower Parties**" means the collective reference to Holdings, the Borrower and each Subsidiary of the Borrower and "**Borrower Party**" means any of them.

"**Borrower Solicitation of Discount Range Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(C).

"**Borrower Solicitation of Discounted Prepayment Offers**" means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(D).

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

"**Business Day**" means any day that is not a Legal Holiday and, with respect to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

"**Capital Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of Cayman Holdings and the Restricted Subsidiaries.

"**Capital Stock**" means:

(1) in the case of a corporation or exempted company, corporate stock or shares in the capital of such corporation or exempted company;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership, exempted limited partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

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

"**Capitalized Software Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

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

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

"**Cash Equivalents**" means:

(1) Dollars;

(2) [reserved];

(3) local currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business or consistent with industry practice;

(4) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(5) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(6) repurchase obligations for underlying securities of the types described in clauses (4) and (5) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (5) above;

(7) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 36 months after the date of acquisition thereof;

(8) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency);

(9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(10) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(12) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency);

(13) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (12) above; and

(14) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (14) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (14) and in this paragraph.

"**Cash Management Agreement**" means any agreement entered into from time to time by Holdings, the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"**Cash Management Bank**" means any Person that is an Agent, an Arranger, a Lender or an Affiliate of an Agent or Lender at the time it entered into a Cash Management Agreement, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of an Agent or Lender.

"**Cash Management Obligations**" means obligations owed by Holdings, the Borrower or any Restricted Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

"**Cash Management Services**" means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

"**Casualty Event**" means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

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

"**CFC Holdco**" means a Domestic Subsidiary that has no material assets (directly or through one or more disregarded entities) other than the Equity Interests and, if applicable, indebtedness in one or more Foreign Subsidiaries that are CFCs, including the indirect ownership of such Equity Interests or indebtedness.

"**Change in Law**" means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111 203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

"**Change of Control**" means the occurrence of any of the following after the Closing Date:

(1) at any time prior to the consummation of a Qualifying IPO after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or any Parent Company; or

(2) at any time following the consummation of a Qualifying IPO after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act) of Equity Interests of the Borrower or such Parent Company representing more than forty percent (40%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or such Parent Company, as applicable, and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower or such Parent Company, as applicable, beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders; or

(3) Holdings shall cease to be the registered owner of 100% of the Equity Interests of the Borrower unless in connection with the consummation of a Qualifying IPO by the Borrower.

unless, in the case of clause (1) or (2) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower or any Parent Company.

"**Claim**" means any actions, suits or written demands or claims.

"**Class**" means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., "fungibility")) and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

"**Closing Date**" means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, and the Closing Date Term Loans are made to the Borrower pursuant to Section 2.01(1), which date was June 14, 2021.

"**Closing Date Distribution**" means a special cash dividend to the direct and indirect holders of Equity Interests of the Borrower.

"**Closing Date Refinancing**" means (i) the repayment and discharge of the Existing Credit Agreement, (ii) the termination of all commitments to extend credit thereunder and (iii) the termination and/or release of all guarantees and security granted in connection therewith.

"**Closing Date Term Loan Commitment**" means, as to each Term Lender, its obligation to make a Closing Date Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Lender's name under on Schedule 2.01 under the caption "Closing Date Term Loan Commitment" or in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption) pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Section 2.14, 2.15, 2.16 or 10.01). The initial aggregate amount of the Closing Date Term Loan Commitments is $350,000,000.00.

"**Closing Date Term Loans**" means the Term Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

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

"**Collateral**" means all the "Collateral" (or equivalent term) as defined in any Collateral Document.

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

"**Collateral and Guarantee Requirement**" means, at any time, the requirement that:

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(1)(c) or (b) pursuant to Section 6.11 or 6.13 at such time required by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) Holdings (or any successor thereto), (b) each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(1) hereto, (c) any

Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) (i) any Permitted Incremental Equivalent Debt, (ii) any Credit Agreement Refinancing Indebtedness and/or (iii) the ABL Facility and (d) the Borrower (other than with respect to its direct Obligations as a primary obligor) (the Persons in the preceding clauses (a) through (d) collectively, the "**Guarantors**");

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest with the priority set forth in the Applicable Intercreditor Agreement, subject only to Liens permitted by Section 7.01, in:

(a) all the Equity Interests of the Borrower,

(b) all Equity Interests of each direct, wholly owned Material Domestic Subsidiary (other than any CFC Holdco) that is directly owned by any Loan Party, and

(c) 65% of the issued and outstanding voting Equity Interests and 100% of the issued and outstanding Equity Interests that are not voting Equity Interests of each (i) wholly owned Material Domestic Subsidiary that is (a) a CFC Holdco and (b) directly owned by the Borrower or any Subsidiary Guarantor and (ii) Foreign Subsidiary that is directly owned by any Loan Party;

(4) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01 or under any Collateral Document and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts other than Securitization Assets), including all accounts, deposit accounts, inventory, equipment, investment property, contract rights, applications and registrations of IP Rights filed in the United States, instruments, chattel paper and documents, letter of credit rights, commercial tort claims, other general intangibles, and proceeds of the foregoing, in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by:

(i) delivering certificated securities, intercompany notes and other instruments in which a security interest can be perfected by physical control, in each case to the extent required hereunder or the Security Agreement;

(ii) filing financing statements under the Uniform Commercial Code; or

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office; and

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the Applicable Intercreditor Agreements.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between the Administrative Agent and the Borrower;

(B) the Collateral and Guarantee Requirement shall not apply to any Excluded Assets;

(C) no deposit account control agreement, securities account control agreement or other control agreements or control arrangements shall be required with respect to any deposit account, securities account or other asset specifically requiring perfection through control agreements except to the extent required under the ABL Facility; *provided*, however, that this requirement shall be deemed satisfied for so long as the ABL Facility Administrative Agent is acting as agent for the benefit of the Collateral Agent pursuant to the ABL Intercreditor Agreement with respect to any deposit account control agreement or securities account control agreement governed by New York law to which the ABL Facility Administrative Agent is a party; *provided*, *further*, *however*, that in no event shall the Borrower or any Guarantor be required to execute or deliver (or maintain in effect) any deposit account control agreement or securities account control agreement if there is no ABL Facility then in effect or such control agreement is not otherwise required to be delivered to the ABL Facility Administrative Agent under the terms of the ABL Facility;

(D) no actions in any jurisdiction other than the U.S. or that are necessary to comply with the Laws of any jurisdiction other than the U.S. shall be required in order to create any security interests in assets located, titled, registered, applied for, filed, or arising under laws outside of the U.S. or to perfect such security interests (it being understood that there shall be no security agreements, pledge agreements, or share charge (or mortgage) agreements governed under the Laws of any jurisdiction other than the U.S.) and there shall be no requirement to deliver landlord lien waivers, estoppels and collateral access letters;

(E) no stock certificates of Subsidiaries other than Material Subsidiaries shall be required to be delivered to the Collateral Agent; and

(F) no perfection steps shall be required with respect to (i) letter of credit rights, except to the extent constituting a support obligation for other Collateral as to which perfection is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (ii) commercial tort claims with a value of less than $15.0 million, (iii) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC financing statement, and (iv) promissory notes evidencing debt for borrowed money in a principal amount of less than $15.0 million.

"**Collateral Documents**" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(c), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Commitment**" means Closing Date Term Loan Commitments, Incremental Term Loan Commitment, Refinancing Commitments or Extended Commitments, or any commitment in respect of Replacement Loans, as the context may require.

"**Committed Loan Notice**" means a notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of Eurodollar Rate Loans of a given Class, pursuant to Section 2.02(1), which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent, including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent, appropriately completed and signed by a Responsible Officer of the Borrower.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

"**Compensation Period**" has the meaning specified in Section 2.12(3)(b).

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower

(1) certifying as to whether an Event of Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Event of Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)); and

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i) Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year ended on or about January 31, 2023 of the Borrower and (ii) the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii).

"**Consolidated Cash Interest Charges**" means, as of any date for the applicable period ending on such date with respect to any Person and its Restricted Subsidiaries on a consolidated basis, the Consolidated Interest Expense determined on a cash basis only and solely in respect of Indebtedness of the type described in clause (1) of the definition thereof and solely in respect of debt for borrowed money and excluding, for the avoidance of doubt, (i) any non-cash interest expense, including capitalized interest, whether paid or accrued, (ii) the amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (iii) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses, (iv) any expenses resulting from discounting of indebtedness in connection with the application of recapitalization accounting or purchase accounting, (v) penalties or interest related to taxes and any other amounts of noncash interest resulting from the effects of acquisition method accounting or pushdown accounting, (vi) the accretion or accrual of, or accrued interest on, discounted liabilities (other than Indebtedness) during such period, (vii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging, (viii) any one-time cash costs associated with breakage in respect of Hedge Agreements for interest rates, (ix) any payments with respect to make whole premiums or other breakage costs of any Indebtedness, (viii) all non-recurring interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations, all as calculated on a consolidated basis in accordance with GAAP and (ix) expensing of bridge, arrangement, structuring, commitment or other financing fees.

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of any Person and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of any Person and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt and other long-term liabilities, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) all Indebtedness consisting of Loans (as defined in the ABL Facility), Swing Line Loans (as defined in the ABL Facility) and L/C Obligations (as defined in the ABL Facility) to the extent otherwise included therein or any other revolving loans, swingline loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs and (K) any liabilities in respect of Hedge Agreements, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated First Lien Debt**" means as of any date of determination, with respect to any Person and its Restricted Subsidiaries, (a) Loans under this Agreement (including any Incremental Term Loans), Loans (as defined in the ABL Facility) under the ABL Facility (including any Incremental Revolving Credit Loans (as defined in the ABL Credit Agreement)), Capitalized Lease Obligations and other Consolidated Total Debt secured by Collateral (or any portion thereof) on an equal priority basis (but without regard to the control of remedies) with Liens securing the Obligations or the Liens securing the ABL Obligations minus (b) without duplication, the aggregate amount of unrestricted cash and Cash Equivalents included in the consolidated balance sheet of such Person and its Restricted Subsidiaries as of such date (but excluding cash and Cash Equivalents which are listed as "Restricted" on such balance sheet), which aggregate amount of cash and Cash Equivalents shall be determined without giving *pro forma effect* to the proceeds of Indebtedness incurred on such date.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments, (d) the interest component of Capitalized Lease Obligations and (e) net payments, if any, pursuant to interest rate obligations under any Hedge Agreement with respect to Indebtedness); plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, exceptional, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any multi-year strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs (including any costs and expense of any directors of any Parent Company following a Qualifying IPO); costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and IP Rights development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business or consistent with industry practice) or income (loss) from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of unless otherwise elected by such Person);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and, solely for the purpose of the Available Amount, the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period;

(6) solely for the purpose of determining the Available Amount, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or such Person reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Term Loans and the syndication and incurrence of any of the Facilities), issuance of Equity Interests (including by any direct or

indirect parent of such Person), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Indebtedness evidenced by this Agreement or the ABL Facility) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) the amount of any management, monitoring, consulting, transaction and advisory fees and related expenses paid to the Investors (or any accruals relating to such fees and related expenses) during such period to the extent otherwise permitted by Section 6.19;

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

"**Consolidated Secured Debt**" means, as of any date of determination, with respect to any Person and its Restricted Subsidiaries, the aggregate amount of Consolidated Total Debt that is secured by a Lien on any assets or property of such Person or any of its Restricted Subsidiaries that constitutes Collateral.

"**Consolidated Total Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of any Person and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition), consisting of Indebtedness for borrowed money, Purchase Money Obligations, Capitalized Lease Obligations, debt obligations evidenced by notes or similar instruments and Guarantees of Indebtedness listed above minus (b) the aggregate amount of all unrestricted cash and Cash Equivalents included in the consolidated balance sheet of such Person and its Restricted Subsidiaries as of such date (but excluding cash and Cash Equivalents which are listed as "Restricted" on such balance sheet), which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date; *provided*, Consolidated Total Debt will not include Non-Recourse Indebtedness and Indebtedness in respect of any (1) letter of credit, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations, except any unpaid termination payments thereunder. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

"**Consolidated Working Capital**" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities. In measuring any increase or decrease in Consolidated Working Capital for any period, (1) to the extent any Person or any of its Restricted Subsidiaries has consummated during such period any one or more acquisitions or dispositions of any Person, then (a) in the case of an acquisition, the Consolidated Working Capital of such acquired Person as of the date of the consummation of such acquisition (after giving effect to the transactions consummated with respect to such acquisition) will be added to the Consolidated Working Capital of such Person and its Restricted Subsidiaries as of the first day of such period and (b) in the case of a disposition, the Consolidated Working Capital of the disposed

Person as of the date of the disposition of such Person shall be subtracted from the Consolidated Working Capital of such Person and its Restricted Subsidiaries as of the first day of such period and (2) the application of recapitalization or purchase accounting as a result of any acquisitions or dispositions completed during such period will be excluded.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Contract Consideration**" has the meaning specified in clause (2)(k) of the definition of "Excess Cash Flow."

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

"**Controlled Investment Affiliate**" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

"**Convertible Indebtedness**" means Indebtedness of the Borrower (which may be guaranteed by the Guarantors) permitted to be incurred hereunder that is either (a) convertible into common stock of the Borrower or any Parent Company (and cash in lieu of fractional shares) or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Borrower or any Parent Company or cash (in an amount determined by reference to the price of such common stock).

"**Covered Entity**" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Covered Indebtedness**" means each of the following: (x) Subordinated Indebtedness, (y) Indebtedness of the type described in clause (1)(a) of the definition thereof, which is secured by a Lien on the Collateral on a junior basis to the Liens securing the Obligations and (z) Indebtedness of the type described in clause (1)(A) of the definition thereof, which is unsecured and, in each case, the principal amount of which is greater than the Threshold Amount.

"**Credit Agreement Refinanced Debt**" has the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness."

"**Credit Agreement Refinancing Indebtedness**" means secured or unsecured Indebtedness of the Borrower or any Guarantor; *provided* that:

(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or in part, Indebtedness that is either (a) Loans, or (b) other Credit Agreement Refinancing Indebtedness ("**Credit Agreement Refinanced Debt**");

(2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Credit Agreement Refinanced Debt being exchanged, extended, renewed, replaced or refinanced except to the extent permitted under Section 1.02(10) (*plus* (a) the amount of all unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), and other similar amounts payable with respect to the Credit Agreement Refinanced Debt and (b) underwriting discounts, fees, commissions, costs, expenses and other similar amounts payable with respect to such refinancing);

(3) the (a) Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Credit Agreement Refinanced Debt and (b) final maturity date of such Credit Agreement Refinancing Indebtedness is no earlier than the final maturity date of the Credit Agreement Refinanced Debt;

(4) any mandatory prepayments of:

(a) any Permitted Junior Priority Refinancing Debt or any Credit Agreement Refinancing Indebtedness that comprises unsecured notes or loans may not be made except to the extent that prepayments are (i) permitted hereunder and (ii) to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the Loans and any such Permitted Equal Priority Refinancing Debt; and

(b) any Permitted Equal Priority Refinancing Debt shall be made on a *pro rata* basis or less than *pro rata* basis (but not greater than a pro rata basis) with the Closing Date Term Loans (other than pursuant to a refinancing permitted hereunder or with respect to greater than *pro rata* payments to an earlier maturing tranche);

(5) such Indebtedness is not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Guarantor;

(6) if such Indebtedness is secured:

(a) such Indebtedness is not secured by any assets or property of the Borrower or any Restricted Subsidiary that does not constitute Collateral;

(b) [reserved];

(c) if such Indebtedness is secured, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Applicable Intercreditor Agreement; and

(7) the covenants and events of default applicable to such Indebtedness (x) are on market terms or (y) are substantially identical to, or, taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Credit Agreement Refinanced Debt, in each case as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness, which documentation may be redacted (i) where and to the extent that the Borrower believes that such redaction is reasonably necessary to preserve attorney-client, work product or similar privilege between the Loan Parties and their counsel with respect to any matter or to comply with the confidentiality obligations binding on the Borrower, any Subsidiary or any Parent Company or (ii) as otherwise reasonably determined by the Borrower (*provided* that in the case of clauses (i) and (ii) such redactions do not apply to provisions relating to Collateral pledged to secure the Obligations); *provided further* that this clause (7) will not apply to:

(i) terms addressed in the preceding clauses (1) through (6),

(ii) interest rate, fees, funding discounts and other pricing terms,

(iii) redemption, prepayment or other premiums,

(iv) optional redemption or prepayment terms and

(v) covenants and other terms applicable only to periods after the Latest Maturity Date of the Closing Date Term Loans at the time of incurrence of such Indebtedness or added for the benefit of the Lenders hereunder.

Anything to the contrary notwithstanding (including, for the avoidance of doubt, clause (3) above), Credit Agreement Refinancing Indebtedness will include (1) any Registered Equivalent Notes issued in exchange therefor and (2) any Qualifying Bridge Facility, in which case, clause (3) of the first proviso in this definition shall not prohibit the inclusion of customary terms for "bridge" facilities, including customary mandatory prepayment, repurchase or redemption provisions.

For the avoidance of doubt, any voluntary prepayments of Credit Agreement Refinancing Indebtedness may be made on a *pro rata* basis, greater than *pro rata* basis or less than *pro rata* basis with other Loans.

"**Credit Parties**" has the meaning specified in Section 9.19.

"**Daily Simple SOFR**" with respect to any applicable determination date means the secured overnight financing rate ("**SOFR**") published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source).

"**Debt Fund Affiliate**" means each of (i) Acme Holdco Leveraged Solutions III LLC, (ii) Cermak Road LLC, (iii) Elston Street LLC and (iv) any other Affiliate of the Sponsor that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course, and with respect to which the Sponsor does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity and that exercises independent discretion from the private equity business of the Sponsor.

"**Debt Representative**" means, with respect to any series of Indebtedness secured by Liens permitted under clause (7)(f), (7)(g), (7)(h) or 21 of the definition of "Permitted Liens", Permitted Incremental Equivalent Debt, Liens securing Indebtedness permitted under clauses (14), (25) and (31) of Section 7.02(b), Permitted Equal Priority Refinancing Debt, Permitted Junior Priority Refinancing Debt or any other Indebtedness secured by Liens on the Collateral permitted under this Agreement, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, provisional liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Declined Proceeds**" has the meaning specified in Section 2.05(2)(g).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Default Rate**" means an interest rate with respect to any Eurodollar Rate Loan or Base Rate Loan, equal to (1) the Base Rate, *plus* (2) the Applicable Rate applicable to Base Rate Loans, *plus* (3) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)) *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" means, subject to Section 2.17(2), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, (d) has, or has a direct or indirect parent company that has, (i) become or is the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization, provisional liquidation or liquidation of its business or assets or a custodian appointed for it or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (e) has become the subject of a Bail-in Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under this definition shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

"**Derivative Instrument**" with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such person or any Affiliate of such person that is acting in concert with such person in connection with such person's investment in the Obligations (other than a Screened Affiliate) is a party (whether or not requiring further performance by such person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Obligations and/or the creditworthiness of the Borrower and/or any one or more of the Guarantors (the "**Performance References**").

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on such Designated Non-Cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Borrower, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation of the Available Amount.

"**Designated Revolving Commitments**" means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer's Certificate delivered to the Administrative Agent as "Designated Revolving Commitments" until such time as the Borrower subsequently delivers an Officer's Certificate to the Administrative Agent to the effect that such commitments will no longer constitute "Designated Revolving Commitments"; *provided* that on the date such Designated Revolving Commitments are established, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the applicable Total Net Leverage Ratio, Senior Secured Leverage Ratio, First Lien Net Leverage Ratio and the availability of any applicable Basket hereunder on such date after giving *pro forma* effect to the incurrence of the entire committed amount of the Indebtedness thereunder (but without netting any cash proceeds thereof), in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with the Total Net Leverage Ratio, Senior Secured Leverage Ratio, First Lien Net Leverage Ratio and the availability of any Baskets hereunder. For the avoidance of doubt, in the case of any Designated Revolving Commitments permitted hereunder, the reference to the "incurrence" of Indebtedness shall refer to the date on which such Designated Revolving Commitments are established.

"**Directing Lender**" has the meaning specified in Section 8.04(2).

"**discharge**" means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, any such case in whole or in part.

"**Discount Prepayment Accepting Lender**" has the meaning assigned to such term in Section 2.05(1)(e)(B)(2).

"**Discount Range**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Amount**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Prepayment Notice**" means a written notice of the Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(C)(1) substantially in the form of Exhibit J.

"**Discount Range Prepayment Offer**" means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent's receipt of a Discount Range Prepayment Notice.

"**Discount Range Prepayment Response Date**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

"**Discount Range Proration**" has the meaning assigned to such term in Section 2.05(1)(e)(C)(3).

"**Discounted Prepayment Determination Date**" has the meaning assigned to such term in Section 2.05(1)(e)(D)(3).

"**Discounted Prepayment Effective Date**" means in the case of the Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(C) or Section 2.05(1)(e)(D), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

"**Discounted Term Loan Prepayment**" has the meaning assigned to such term in Section 2.05(1)(e)(A).

"**disposition**" has the meaning set forth in the definition of "Asset Sale".

"**Disqualified Institution**" means (a) any competitor of the Borrower or its Subsidiaries identified by name in writing by or on behalf of the Borrower or the Sponsor to (i) the Arrangers from time to time on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by name in writing by or on behalf of the Borrower or the Sponsor to the Arrangers prior to the Closing Date, (c) any Affiliate of the entities described in the preceding clauses (a) or (b) (excluding, in the case of clause (a), any Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which the primary Person referenced in clause (a) does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Borrower or the Sponsor to (i) the Arrangers on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date or (d) Excluded Affiliates; it being understood and agreed that the identification of any Person as a Disqualified Institution after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired or agreed to acquire an assignment or participation interest in any Loan, subject to Section 10.07(n), until such time such Person no longer constitutes a Lender. The identity of Disqualified Institutions shall be made available, upon request but not posted or distributed, to all Lenders and prospective assignees.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or

in part, in each case prior to the date 91 days after Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of, future, current or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability; *provided further* any Capital Stock held by any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary or in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock.

"**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.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Domestic Subsidiary**" means any direct or indirect Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

"**Early Opt-in Effective Date**" means, with respect to any Early Opt-in Election, the sixth (6th) 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 (5th) 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.

"**Early Opt-in Election**" means the occurrence of:

(1) a determination by the Administrative Agent, or a notification by the Borrower to the Administrative Agent that the Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Adjusted Eurodollar Rate, and

(2) the joint election by the Administrative Agent and the Borrower to replace the Adjusted Eurodollar Rate with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.

"**ECF Payment**" has the meaning specified in Section 2.05(2)(a).

"**ECF Percentage**" has the meaning specified in Section 2.05(2)(a).

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means any Person that meets the requirements to be an assignee under Section 10.07(b); *provided* that no Defaulting Lender(s) or Disqualified Institution(s) may be Eligible Assignee(s).

"**Engagement Letter**" means that certain Engagement Letter, dated as of May 19, 2021, among the Borrower, BofA Securities, Morgan Stanley, Goldman Sachs and KCM, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Environment**" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

"**Environmental Claim**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, or proceedings with respect to any Environmental Liability or Environmental Law, (hereinafter "Claims"), including (i) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"**Environmental Laws**" means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

"**Environmental Liability**" means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) resulting from or relating to (a) any violation of Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Interests**" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"**Equity Offering**" means any public or private sale of common stock or Preferred Stock of the Borrower or any Parent Company (excluding Disqualified Stock), other than:

(1) issuances to any Restricted Subsidiary of the Borrower; and

(2) any such public or private sale that constitutes an Excluded Contribution.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer at the relevant time within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 412 of the Code, under Section 414(m) or (o) of the Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is "insolvent" (within the meaning of Section 4245 of ERISA) or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 412(c) of the Code with respect to any Pension Plan; or (j) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA or Section 430 of the Code).

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

"**Eurodollar Rate**" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the London interbank offered rate for Eurodollar deposits or such other rate per annum as is widely recognized as the successor thereto if the ICE Benchmark Administration is no longer making a London interbank offered rate available, as published on the Reuters screen page LIBOR01 ("**Published LIBOR**") (or such other commercially available source providing quotations of Published LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the Administrative Agent's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) Published LIBOR, at approximately 11:00 a.m., London time, determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by the Administrative Agent's London Branch to major banks in the London interbank eurodollar market at their request at the date and time of determination.

"**Eurodollar Rate Loan**" means a Loan that bears interest at a rate based on Adjusted Eurodollar Rate.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excess Cash Flow**" means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period,

(d) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period and

(e) cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income; over

(2) at the option of the Borrower, the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of the Acquisition or any Permitted Acquisition or other investment permitted hereunder) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of clauses (1) through (15) of the definition of "Consolidated Net Income,"

(b) the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of IP Rights accrued or made in cash during such period (including any such Investments made after the end of the fiscal year covered by the relevant financial statements but prior to the making of such ECF Payment (an "**After Year-End Investment**")), in each case, except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility or other revolving loans) of the Borrower or any Restricted Subsidiary;

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, the ABL Facility to the extent there is an equivalent permanent reduction in commitments thereunder (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof), Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness, in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07 and mandatory prepayment of Term Loans pursuant to Section 2.05(2)(b) or 2.05(2)(c), any mandatory prepayment of the ABL Facility required pursuant to the terms of the ABL Credit Agreement to the extent there is an equivalent permanent reduction in commitments thereunder, any mandatory discharge of Permitted Incremental Equivalent Debt or Credit Agreement Refinancing Indebtedness pursuant to the corresponding provisions of the governing documentation thereof, in each case, to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (w) all other prepayments of Term Loans pursuant to Section 2.05(1)(a) and Section 2.05(1)(e) and any voluntary prepayments of Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness to the extent the prepayment required pursuant thereto is reduced thereby, (x) all prepayments in respect of any revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (y) payments on any Covered Indebtedness, except in each case to the extent permitted to be paid pursuant to Section 7.05) made during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, in each case, except to the extent financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid) or the proceeds from any Specified Equity Contributions,

(d) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) for such period,

(e) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(f) the amount of Investments and Permitted Acquisitions made (or committed to be made) by the Borrower and its Restricted Subsidiaries during such period (in each case, including to the extent prepaid pursuant to an After Year-End Investment) (it being understood that to the extent such Investments and Permitted Acquisitions are not actually made or committed in a subsequent period, such amount shall increase the calculation of Excess Cash Flow in the subsequent fiscal year),

(g) the amount of Restricted Payments paid in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, (other than Restricted Payments made pursuant to Section 7.05(b)(15)), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (other than the ABL Facility) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid) or the proceeds from any Specified Equity Contribution (provided that, for the avoidance of doubt, any such Restricted Payments that have not been applied to reduce the payments which may be due from time to time pursuant to this clause (g) shall be carried over to subsequent periods),

(h) the aggregate amount of expenditures (to the extent not funded with the proceeds of Funded Debt (other than the ABL Facility) (unless such Indebtedness has been repaid and cannot be reborrowed) or the proceeds from any Specified Equity Contribution) actually made by the Borrower and the Restricted Subsidiaries in cash during such period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(i) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period, or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such period, that are made in connection with any prepayment or redemption of Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and such payments reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.05(2)(a),

(j) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Restricted Subsidiaries (the "**Planned Expenditures**"), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with any of the proceeds received from (A) the issuance or incurrence of long-term Indebtedness (except to the extent repaid) or (B) the proceeds from any Specified Equity Contributions); *provided* that to the extent that the aggregate amount of cash actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such subsequent period of four consecutive fiscal quarters,

(k) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period *plus* the amount of distributions with respect to taxes made in such period under Section 7.05(b)(14) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(l) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income, and

(m) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of this Agreement, the other Loan Documents and related documents and any ABL Loan Documents) and including, in each case, any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful,

(n) the amount of cash consideration paid by the Borrower and the Restricted Subsidiaries (on a consolidated basis) in connection with investments (other than intercompany Investments among the Borrower and the Restricted Subsidiaries, Investments in Cash Equivalents or money market instruments in the ordinary course of business) made during such period (in each case, including to the extent prepaid pursuant to an After-Year Investment) (including Permitted Acquisitions, investments constituting Permitted Investments and investments made pursuant to Section 7.05), except to the extent such investments were financed with the proceeds of Funded Debt (other than the ABL Facility or any other revolving facility) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid) and the proceeds from any Specified Equity Contribution (it being understood that to the extent such investment is not actually made or committed in a subsequent period, such amount shall increase the calculation of Excess Cash Flow for such subsequent period).

"**Excess Cash Flow Period**" means each fiscal year of the Borrower, commencing with the fiscal year ending on or about January 31, 2023.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Affiliates**" means any Affiliates of any Arranger that are engaged as principals primarily in private equity, mezzanine financing or venture capital transactions or any such Affiliate's officers, directors, employees, legal counsel, independent auditors, professionals and other experts or agents (other than (x) such employees that are required, in accordance with industry regulations or such Arranger's (or its Affiliate's) internal policies and procedures, to act in a supervisory capacity or (y) such Arranger's (or its Affiliate's) internal legal, compliance, risk management, credit or investment committee members); *provided* that Merrill Lynch shall not be an Excluded Affiliate.

"**Excluded Assets**" means (i) all fee-owned real property or ground leased property and all real property leasehold interests, (ii) pledges and security interests prohibited by applicable Law (including any legally effective requirement to obtain the consent of any governmental authority) and any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such licenses, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other similar applicable Law notwithstanding such prohibition, (iii) Margin Stock, (iv) any cash and cash equivalents, deposit accounts and securities accounts (including securities entitlements and related assets) (it being understood that this exclusion shall not affect the grant of the Lien on proceeds of Collateral and all proceeds of Collateral shall be Collateral), unless the foregoing also secures the ABL Facility in which case the foregoing shall not constitute Excluded Assets until such time that it no longer secures the ABL Facility, (v) any lease, license or other agreements, or any property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangements, in each case to the extent permitted under the Loan Documents, to the extent that a pledge thereof or a security interest therein would violate or invalidate such lease, license or agreement, purchase money, Capitalized Lease Obligations or similar arrangement, or create a right of termination in favor of any other party thereto (other than any Loan Party) after giving effect to the applicable

anti-assignment provisions of the Uniform Commercial Code or other similar applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other similar applicable Law notwithstanding such prohibition, (vi) assets for which a pledge thereof or a security interest therein would result in a material adverse tax consequence as reasonably determined by the Borrower (in consultation with (but without the consent of) the Administrative Agent), (vii) assets for which the Administrative Agent and the Borrower have determined in their reasonable judgment and agree in writing that the cost of creating or perfecting such pledges or security interests therein would be excessive in view of the benefits to be obtained by the Lenders therefrom, (viii) any intent-to-use trademark or service mark application in the United States prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto with the United States Patent and Trademark Office, but only to the extent, if any, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration issuing from such intent-to-use application under applicable federal law, (ix) Excluded Equity and (x) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC financing statement.

"**Excluded Contribution**" means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and

(3) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower.

"**Excluded Equity**" means Equity Interests (or, in the case of clause (iii) below, Voting Stock) (i) of any Unrestricted Subsidiary, (ii) of any Subsidiary acquired pursuant to a Permitted Acquisition if such Equity Interests are pledged and/or mortgaged as security for any assumed Indebtedness permitted under Section 7.02(b)(14)(a) and if and for so long as the terms of such Indebtedness prohibit the creation of any other Lien on such Equity Interests, (iii) of any Foreign Subsidiary or CFC Holdco, in each case which is a subsidiary of the Borrower or a Domestic Subsidiary of the Borrower and not otherwise constituting Excluded Equity, in excess of 65% of the issued and outstanding Voting Stock of each such Foreign Subsidiary or CFC Holdco, (iv) of any Subsidiary with respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment and agreed in writing that the costs of providing a pledge of such Equity Interests or perfection thereof is excessive in view of the benefits to be obtained by the Secured Parties therefrom, (v) of any captive insurance companies, not-for-profit Subsidiaries, special purpose entities (including any Securitization Subsidiary), (vi) to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than the Borrower or any wholly owned Restricted Subsidiary of the Borrower), under the terms of any applicable organizational documents, joint venture agreement or shareholders' agreement, equity interests in any person other than wholly-owned Restricted Subsidiaries and (vii) of any Subsidiary outside the United States the pledge of which is prohibited by applicable Laws or which would reasonably be expected to result in a violation or breach of, or conflict with, fiduciary duties of such Subsidiary's officers, directors or managers.

"**Excluded Proceeds**" means, with respect to any Asset Sale or Casualty Event, the sum of (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that otherwise are waived by the Required Facility Lenders from the requirement to be applied to prepay the applicable Term Loans pursuant to Section 2.05(2)(b).

"**Excluded Subsidiaries**" means all of the following and "**Excluded Subsidiary**" means any of them:

(1) any Subsidiary that is not a direct, wholly owned Subsidiary of the Borrower or a Subsidiary Guarantor,

(2) any Foreign Subsidiary,

(3) any CFC Holdco,

(4) any Domestic Subsidiary that is a Subsidiary of any CFC,

(5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law, accounting policies or by Contractual Obligation existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition and only for so long as such restriction is continuing), on the date such Subsidiary is so acquired) from providing a Guaranty, or if such Guaranty would require governmental (including regulatory) or third party (other than a Loan Party) consent, approval, license or authorization, unless such consent, approval, license or authorization has been received, or is received after commercially reasonable efforts to obtain the same, which efforts may be requested by the Administrative Agent,

(6) any special purpose securitization vehicle (or similar entity) or any Securitization Subsidiary,

(7) any Captive Insurance Subsidiary or not-for-profit Subsidiary,

(8) any Subsidiary that is not a Material Subsidiary,

(9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any adverse tax consequences) of providing the Guaranty is excessive in relation to the benefits to be obtained by the Lenders therefrom,

(10) any special purpose entity formed for the primary purpose to hold a leasehold interest in real property that is subject to a Sale-Leaseback Transaction and has no other activities other than those incidental to holding such leasehold interest,

(11) any Unrestricted Subsidiary,

(12) any Subsidiary to the extent the provision of a Guarantee by such Subsidiary would result in a material adverse tax consequence as reasonably determined by the Borrower in consultation with the Administrative Agent,

(13) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition or other Investment not prohibited by this Agreement financed with Indebtedness permitted to be assumed under Section 6.01 hereof (and not incurred in contemplation thereof) and any Restricted Subsidiary thereof that Guarantees such Indebtedness, in each case, to the extent such Indebtedness prohibits such Subsidiary from becoming a Guarantor (and only for so long as such prohibition exists).

"**Excluded Swap Obligation**" means, with respect to any Loan Party, any obligation (a "**Swap 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, if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 2.07 of the Guaranty and any other "keepwell, support or other agreement" for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the Guaranty of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest becomes illegal.

"**Excluded Taxes**" means, with respect to each Agent and each Lender,

(1) any tax on such Agent or Lender's net income or profits (or franchise tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction, other than a connection arising solely from such Agent or Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document),

(2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any other jurisdiction described in clause (1),

(3) other than with respect to any Lender that becomes a party hereto pursuant to the Borrower's request under Section 3.07, any U.S. federal withholding tax that is imposed on amounts payable to a Lender pursuant to a Law in effect at the time such Lender becomes a party hereto (or designates a new Lending Office) (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a law in effect on the later of the date on which such Lender becomes a party hereto or the date on which the affected partner becomes a partner of such Lender or designates a new Lending Office), except, in the case of a Lender or partner that designates a new Lending Office or is an assignee, to the extent that such Lender or partner (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal withholding tax pursuant to Section 3.01,

(4) any withholding tax attributable to a Lender's failure to comply with Section 3.01(3),

(5) any withholding tax imposed under FATCA and

(6) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (5) of this definition.

"**Existing Credit Agreement**" means that certain Term Loan Credit Agreement, dated as of June 14, 2019, by and among, inter alios, the Borrower, Torrid Inc. and Cortland Capital Market Services LLC as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Extended Commitments**" means the Term Loan Commitments held by an Extending Lender.

"**Extended Loans**" means the Term Loans made pursuant to Extended Commitments.

"**Extending Lender**" means each Lender accepting an Extension Offer.

"**Extension**" has the meaning specified in Section 2.16(1).

"**Extension Amendment**" has the meaning specified in Section 2.16(2).

"**Extension Offer**" has the meaning specified in Section 2.16(1).

"**Facilities**" means the Closing Date Term Loans, any Extended Loans, any Refinancing Term Loans, any Incremental Term Loans or any Replacement Loans, as the context may require, and "**Facility**" means any of them.

"**fair market value**" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

"**FATCA**" means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any regulations promulgated thereunder or official interpretations thereof), any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements entered into among Governmental Authorities in connection with such Sections of the Code (together with any law implementing such agreements).

"**FCPA**" has the meaning specified in Section 5.17.

"**Federal Funds Rate**" means, for any day, 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; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Financial Officer**" means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer or officer of equivalent duties and responsibility of such Person, as appropriate.

"**First Lien Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Debt of the Borrower and its Restricted Subsidiaries outstanding the last day of such Test Period to (b) Adjusted EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, in each case calculated on a *pro forma basis* with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"**Fixed Amounts**" has the meaning specified in Section 1.07(9).

"**Fixed Incremental Amount**" has the meaning specified in the definition of "Permitted Incremental Amount".

"**floor**" means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

"**Foreign Asset Sale**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Casualty Event**" has the meaning specified in Section 2.05(2)(h).

"**Foreign Lender**" means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Plan**" means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

"**Foreign Subsidiary**" means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**Fund**" means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**Funded Debt**" means all Indebtedness of any Person and its Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**GAAP**" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time.

At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided*, *however*, that any such election, once made, will be irrevocable; *provided further* that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower's election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. the Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent.

Notwithstanding the foregoing, if at any time any change occurring after the Closing Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); *provided* further that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

Notwithstanding anything to the contrary contained above, in the definition of "Attributable Indebtedness" or in the definition of "Capitalized Lease Obligation," at the time any determination thereof is to be made, the applicable amount shall be the amount of liability in respect of a capital lease ("finance lease" following the Borrower's adoption of Accounting Standards Codification Topic 842 Leases, ASC 842) that would at such time be required to be capitalized and reflected as a capital lease on a balance sheet prepared in accordance with GAAP. Any finance lease or similar obligations that would not constitute a finance lease prior to the Borrower's adoption of Accounting Standards Codification Topic 842 Leases, ASC 842, shall be deemed not to represent Capitalized Lease Obligations or Indebtedness.

"**General Debt Basket**" has the meaning specified in Section 7.02(b)(12)(b).

"**General RP Basket**" has the meaning specified in Section 7.05(b)(24).

"**Goldman Sachs**" means Goldman Sachs Bank USA.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Granting Lender**" has the meaning specified in Section 10.07(g).

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantor**" has the meaning specified in clause (2) of the definition of "Collateral and Guarantee Requirement." For avoidance of doubt, the Borrower may, in its sole discretion, cause any domestic Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes.

"**Guaranty**" means (a) the Guarantee of the Obligations by the Guarantors substantially in the form of Exhibit E, (b) each other Guarantee and Guarantee supplement delivered pursuant to Section 6.11 and (c) each other Guarantee and Guarantee supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of "Guarantor".

"**Hazardous Materials**" means all explosive or radioactive substances or wastes, and all other hazardous or toxic substances, wastes, pollutants, contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, or radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or form the basis for liability under, any Environmental Law due to their dangerous or deleterious properties or characteristics.

"**Hedge Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Hedge Bank**" means any Person party to a Hedge Agreement that is an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any Hedge Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"**Holdings**" means (a) Torrid Intermediate, LLC, a Delaware limited liability company and (b) upon the consummation of any transaction permitted by Section 7.03(5) with respect to Holdings, the Successor Holdings.

"**Identified Participating Lenders**" has the meaning specified in Section 2.05(1)(e)(C)(3).

"**Identified Qualifying Lenders**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**IFRS**" means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immediate Family Members**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Incremental Amendment**" has the meaning specified in Section 2.14(5).

"**Incremental Amounts**" has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.

"**Incremental Equivalent Ratio Amount**" has the meaning specified in the definition of "Permitted Incremental Equivalent Debt."

"**Incremental Equivalent Ratio Amount Indebtedness**" has the meaning specified in the definition of "Permitted Incremental Equivalent Debt."

"**Incremental Repayment Amount**" has the meaning specified in the definition of "Permitted Incremental Amount".

"**Incremental Starter Amount**" has the meaning assigned to such term in the definition of "Permitted Incremental Amount."

"**Incremental Term Facility**" has the meaning specified in Section 2.14(1).

"**Incremental Term Loan**" has the meaning specified in Section 2.14(1).

"**Incremental Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Incremental Term Loan and "Incremental Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"**Incremental Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lenders; *provided* that at any time prior to the making of the Incremental Term Loans, the Incremental Term Loan Exposure of any Lender shall be equal to such Lender's Incremental Term Loan Commitment.

"**Incurrence Based Amounts**" has the meaning specified in Section 1.07(9).

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business; or

(d) representing the net obligations under any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower or any of its Restricted Subsidiaries solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

provided that notwithstanding the foregoing, Indebtedness will be deemed not to include:

(i) Contingent Obligations (i) existing on the date hereof or (ii) incurred after the date hereof in the ordinary course of business or consistent with industry practice,

(ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) obligations under or in respect of Qualified Securitization Facilities that are non-recourse to the Loan Parties other than any Securitization Repurchase/Indemnity Obligation,

(iv) accrued expenses,

(v) deferred or prepaid revenues,

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Indemnified Liabilities**" has the meaning specified in Section 10.05.

"**Indemnitees**" has the meaning specified in Section 10.05.

"**Independent Assets or Operations**" means, with respect to any Parent Company, that Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

"**Information**" has the meaning specified in Section 10.09.

"**Initial Default**" has the meaning specified in Section 1.02.

"**Intellectual Property Security Agreements**" has the meaning specified in the Security Agreement.

"**Intercompany Subordination Agreement**" means the Intercompany Subordination Agreement, dated as of the Closing Date, substantially in the form of Exhibit Q executed by the Borrower and each Restricted Subsidiary that is party thereto.

"**Interest Coverage Ratio**" means, with respect to any Test Period, the ratio of (a) Adjusted EBITDA of the Borrower and its Restricted Subsidiaries to (b) Consolidated Cash Interest Charges of the Borrower and its Restricted Subsidiaries for such Test Period, in each case calculated on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07; *provided* that for the purpose of calculating the Interest Coverage Ratio for any period ending prior to the expiration of four full fiscal quarters since the Closing Date, Consolidated Cash Interest Charges shall be deemed to be Consolidated Cash Interest Charges for the period from the Closing Date to and including the date of determination multiplied by a fraction equal to (x) 365 divided by (y) the number of days actually elapsed from the Closing Date to such date of determination.

"**Interest Payment Date**" means, (a) as to any Loan of any Class other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date of the Loans of such Class; *provided* that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan of any Class, the last Business Day of each March, June, September and December and the applicable Maturity Date of the Loans of such Class.

"**Interest Period**" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

(1) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(2) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(3) no Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such Eurodollar Rate Loan is a part.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

"**Investment Grade Securities**" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definition of "Unrestricted Subsidiary" and Section 7.05,

(1) "Investments" will include the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) The Borrower's "Investment" in such Subsidiary at the time of such redesignation; *minus*

(b) the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

"**Investors**" means (a) the Sponsor and (b) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"**IPO Entity**" means, at any time upon and after a Qualifying IPO, Holdings or any Parent Company, the Equity Interests of which were issued or otherwise sold pursuant to such Qualifying IPO; *provided* that, immediately following such Qualifying IPO, the Borrower is a direct or indirect wholly owned Subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to such Qualifying IPO.

"**IPO Reorganization Transaction**" means any re-organization or other similar activities among any Parent Company, Holdings, the Borrower and the Restricted Subsidiaries in connection with and reasonably related to consummating a Qualifying IPO, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with the Collateral and Guarantee Requirement and Section 6.11, (b) taken as a whole, the value of the Collateral securing the Obligations and the Guarantees by the Guarantors of the Obligations are not materially reduced or impaired and (c) the Liens in favor of the Administrative Agent for the benefit of the Secured Parties under the Security Documents are not materially impaired.

"**IP Rights**" has the meaning specified in Section 5.15.

"**IRS**" means Internal Revenue Service of the United States.

"**Judgment Currency**" has the meaning specified in Section 10.26.

"**Junior Lien Debt**" means any Indebtedness for borrowed money of any Loan Party that is secured on a junior basis to the Liens securing the Obligations of such Loan Party arising under the Loan Documents.

"**KCM**" means KKR Capital Markets LLC.

"**Latest Maturity Date**" means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Term Loan, any Refinancing Term Loan, Replacement Loan or any Extended Loan, in each case as extended in accordance with this Agreement from time to time.

"**Laws**" means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, legally enforceable guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the legally binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"**LCT Election**" has the meaning specified in Section 1.07.

"**LCT Test Date**" has the meaning specified in Section 1.07.

"**Legal Holiday**" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a "Lender." For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, an Incremental Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment, Incremental Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender.

"**Lender Direction**" has the meaning specified in Section 8.04(2).

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest and any authorized filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

"**Limited Condition Transaction**" means any (1) Permitted Acquisition or other investment permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third-party financing and (2) repayment, repurchase, prepayment or Refinancing of Indebtedness with respect to which an irrevocable notice of repayment (or similar irrevocable notice) is delivered.

"**Loan**" means an extension of credit under Article II or the making of Replacement Loans pursuant to Section 10.01 by a Lender to the Borrower in the form of a Term Loan.

"**Loan Documents**" means, collectively, (a) this Agreement, (b) the Term Notes, (c) any Refinancing Amendment, Incremental Amendment, Extension Amendment or amendment in respect of Replacement Loans, (d) the Guaranty, (e) the Collateral Documents and (f) the Applicable Intercreditor Agreements.

"**Loan Parties**" means, collectively, (a) the Borrower, (b) Holdings and (c) each other Guarantor.

"**Long Derivative Instrument**" means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"**Management Services Agreement**" means the management services agreement or similar agreements among the Sponsor or certain of its respective management companies associated with it or their advisors, if applicable, and the Borrower (or any Parent Company).

"**Management Stockholders**" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or any Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date or will become holders of such Equity Interests in connection with the Transactions.

"**Margin Stock**" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Market Capitalization**" mean an amount equal to (a) the total number of issued and outstanding shares of common Equity Interests of the Borrower, Holdings or any other Parent Company on the date of the declaration of the applicable Restricted Payment multiplied by (b) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"**Material Adverse Effect**" means (i) a material adverse effect on the business, financial condition or results of operations of the Loan Parties and their subsidiaries, taken as a whole, or (ii) a material and adverse effect on the material rights and remedies of the Administrative Agent and the Lenders under the Loan Documents, taken as a whole.

"**Material Domestic Subsidiary**" means any Domestic Subsidiary that is a Material Subsidiary.

"**Material Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Subsidiaries that is a Restricted Subsidiary (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries that are Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries that are Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Subsidiaries that are not Material Subsidiaries solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than

(when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries that are Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries that are Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Test Period, then the Borrower shall, not later than thirty (30) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing (which may be by email) to the Administrative Agent one or more of such Subsidiaries that are Restricted Subsidiaries as "Material Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries. At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made based on the Pro Forma Financial Statements.

"**Maturity Date**" means (i) with respect to the Closing Date Term Loans, in each case that have not been extended pursuant to Section 2.16, the date that is seven years after the Closing Date, (ii) with respect to any tranche of Extended Loans, the final maturity date as specified in the applicable Extension Amendment, (iii) with respect to any Refinancing Term Loans, the final maturity date as specified in the applicable Refinancing Amendment, (iv) with respect to any Incremental Term Loans, the final maturity date as specified in the applicable Incremental Amendment and (v) with respect to Replacement Loans, the final maturity date as specified in the applicable amendment; *provided* that in each case, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

"**Maximum Rate**" has the meaning specified in Section 10.11.

"**Maximum Tender Condition**" has the meaning specified in Section 2.19(2).

"**MFN Protection Provisions**" has the meaning specified in Section 2.14(8).

"**Minimum Tender Condition**" has the meaning specified in Section 2.19(2).

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Morgan Stanley**" means Morgan Stanley Senior Funding, Inc.

"**Multiemployer Plan**" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions, to the extent any liability related thereto remains (contingent or otherwise).

"**Negative Excess Cash Flow Amount**" has the meaning specified in Section 2.05(2).

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalent proceeds received by the Borrower or any of its Restricted Subsidiary in respect of such Asset Sale or Casualty Event, including any Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 2.05(2)(b)) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that (a) subject to clause (b) below, no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed $10.0 million and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $20.0 million (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1) and any amounts not used in any fiscal year may be carried forward and applied to increase the applicable threshold in the subsequent fiscal year); and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary or any Permitted Equity Issuance by the Borrower or any Parent Company, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

"**Net Short**" means, with respect to a Lender or beneficial owner (other than a Lender that is a Regulated Bank), as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its Obligations plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Borrower or any guarantor immediately prior to such date of determination.

"**Non-Consenting Lender**" has the meaning specified in Section 3.07.

"**Non-Defaulting Lender**" means, at any time, a Lender that is not a Defaulting Lender.

"**Non-Excluded Taxes**" means all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"**Non-Extended Lender**" has the meaning specified in Section 2.16.

"**Non-Loan Party**" means any Subsidiary of the Borrower that is not a Loan Party.

"**Non-Recourse Indebtedness**" means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

"**Obligations**" means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, including the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, expenses, Attorney Costs, indemnities and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, expenses, Attorney Costs and/or other amounts are allowed claims in such proceeding,

(2) obligations (other than Excluded Swap Obligations) of the Borrower or any Restricted Subsidiary arising under any Secured Hedge Agreement,

(3) Cash Management Obligations under each Secured Cash Management Agreement and

(4) the Guaranty in respect of each of the foregoing.

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Hedge Bank or Cash Management Bank, the obligations of Holdings, the Borrower or any Subsidiary under any Secured Hedge Agreement and under any Secured Cash Management Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements.

"**OFAC**" has the meaning specified in Section 5.17.

"**Offered Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Offered Discount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Officer's Certificate**" means a certificate signed on behalf of a Person by a Responsible Officer of such Person (which may instead be an unsigned email from a Responsible Officer of such Person).

"**OID**" means original issue discount.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

"**ordinary course of business**" means activity conducted in the ordinary course of business of Holdings and any Restricted Subsidiary, financing transactions in connection therewith and will include Sale-Leaseback Transactions.

"**Organizational Documents**" means

(1) with respect to any corporation or exempted company, the certificate or articles of incorporation and the bylaws or memorandum or articles of association (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, exempted limited partnership, joint venture, trust or other form of business entity, the partnership, exempted limited partnership, joint venture or other applicable agreement of formation, registration or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation, registration or organization and, if applicable, any certificate or articles of formation, registration or organization of such entity.

"**Other Applicable ECF**" means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"**Other Applicable Indebtedness**" means Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness secured on a *pari passu* basis with the Closing Date Term Loans, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a *pari passu* basis with the Closing Date Term Loans.

"**Other Applicable Net Proceeds**" means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"**Other Rate Early Opt-in"** means the Administrative Agent and the Borrower have elected to replace the Adjusted Eurodollar Rate with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(2) and paragraph (2) of the definition of "Benchmark Replacement".

"**Other Taxes**" means any and all present or future stamp, court or documentary Taxes, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"**Outstanding Amount**" means on any date, the outstanding principal amount of any Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans, occurring on such date.

"**Overnight Rate**" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Parent Company**" means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Capital Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), will have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of 50.0% or more of the total voting power of the Voting Stock of such Person. For the avoidance of doubt, Holdings is a Parent Company of the Borrower. Notwithstanding the foregoing, a passive holding company or special purpose acquisition vehicle shall not be considered a "Person" for purposes of this definition and instead the equityholders of such passive holding company or special purpose acquisition vehicle shall be considered for purposes of the foregoing.

"**Pari Passu Intercreditor Agreement**" means a Pari Passu Intercreditor Agreement substantially in the form of Exhibit G-3 among the Collateral Agent and one or more Debt Representatives and the representatives for purposes thereof for holders of one or more other classes of Indebtedness that constitute Indebtedness secured on a pari passu basis with the Closing Date Term Loans, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**Participant**" has the meaning specified in Section 10.07(d).

"**Participant Register**" has the meaning specified in Section 10.07(e).

"**Participating Lender**" has the meaning specified in Section 2.05(1)(e)(C)(2).

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute or otherwise has or may have any liability (contingent or otherwise).

"**Perfection Certificate**" has the meaning specified in the Security Agreement.

"**Performance References**" has the meaning specified in the definition of "Derivative Instrument."

"**Permitted Acquisition**" has the meaning specified in clause (3) of the definition of "Permitted Investments."

"**Permitted Asset Swap**" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received must be applied in accordance with Section 2.05(2)(b)(i).

"**Permitted Bond Hedge Transaction**" means any call or capped call option (or substantively equivalent derivative transaction) on the Borrower's common stock purchased by the Borrower in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

"**Permitted Convertible Indebtedness Call Transaction**" means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

"**Permitted Debt Exchange**" has the meaning specified in Section 2.19(1).

"**Permitted Debt Exchange Notes**" has the meaning specified in Section 2.19(1).

"**Permitted Debt Exchange Offer**" has the meaning specified in Section 2.19(1).

"**Permitted Equal Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a *pari passu* basis with the Closing Date Term Loans.

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

"**Permitted Holder**" means (1) the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of such group and without giving effect to the existence of such group or any other group, such Investor and Management Stockholders, collectively, have beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent, and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Permitted Parent. Notwithstanding the foregoing, a passive holding company or special purpose acquisition vehicle shall not be considered a "Person" for purposes of this definition and instead the equityholders of such passive holding company or special purpose acquisition vehicle shall be considered for purposes of the foregoing.

"**Permitted Incremental Amount**" means the sum of:

(1)

(a) (I) the greater of (x) $135.0 million and (y) 75.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect in accordance with Section 1.07 thereto (the foregoing clauses (x) and (y), the "**Incremental Starter Amount**"), *minus* the aggregate amount of all Incremental Term Loans previously incurred in reliance on the Incremental Starter Amount, *plus*

(b) the aggregate principal amount of (x) any prepayments of Term Loans (in the case of Term Loans consisting of Incremental Term Loans (or any Refinancing thereof) solely to the extent incurred in reliance on this clause (1)) made pursuant to Section 2.05(1)(a), the aggregate amount of all Term Loans repurchased and prepaid pursuant to Section 2.05(1)(e) or otherwise in a manner not prohibited by Section 10.07(l) (determined on the face amount of such prepayment rather than the actual cash applied), payments made pursuant to Section 3.07 (but only to the extent such amount is prepaid or repaid) and (y) all reductions of the ABL Commitments pursuant to Section 2.06 of the ABL Credit Agreement, in each case prior to such date (other than, in each case, prepayments, repurchases and commitment reductions (A) made with the proceeds of the incurrence of Credit Agreement Refinancing Indebtedness or other long-term

Indebtedness (other than the ABL Facility or other revolving loans) or (B) of Incremental Facilities or Incremental Equivalent Debt that had been incurred in reliance on the following clause (2) (the foregoing clauses (x) and (y), the "**Incremental Repayment Amount**"; and the Incremental Starter Amount and the Incremental Repayment Amount, collectively, the "**Fixed Incremental Amount**"; and Indebtedness incurred using the Fixed Incremental Amount, "**Fixed Incremental Amount Indebtedness**"), *plus*

(2) such additional amount (the "**Ratio Amount**" and, Indebtedness incurred using the Ratio Amount, "**Ratio Amount Indebtedness**") that would not result in the Borrower's First Lien Net Leverage Ratio exceeding 2.00 to 1.00 on a *pro forma* basis in accordance with Section 1.07 and including a *pro forma* application of the net proceeds therefrom (excluding for netting purposes the cash proceeds of any then proposed Ratio Amount Indebtedness and with respect to the calculation of the Ratio Amount, without taking into account any Indebtedness that constitutes concurrent draws under the ABL Facility), as if the additional Indebtedness incurred pursuant to this clause (2) had been incurred and the application of the proceeds therefrom has occurred at the beginning of such Test Period;

For the avoidance of doubt, Section 1.07(9) shall apply if the Borrower incurs Fixed Incremental Amount Indebtedness on the same date that it incurs Ratio Amount Indebtedness. The Borrower may reclassify all or any portion of Indebtedness originally incurred under clause (1) above as having been incurred under clause (2) above so long as, at the time of such reclassification, the Borrower would be permitted to incur the aggregate amount of Indebtedness being so reclassified under clause (2) above (it being understood and agreed that such reclassification shall be automatic if at the end of any fiscal quarter such reclassification would then be permitted).

"**Permitted Incremental Equivalent Debt**" means secured or unsecured Indebtedness of any of the Borrower and any Guarantors in the form of loans or one or more series of notes; *provided* that:

(1) the aggregate principal amount of all Permitted Incremental Equivalent Debt on any date such Indebtedness is incurred or issued, after giving effect to such incurrence or issuance, shall not, together with any Incremental Term Facilities incurred on such date (excluding for netting purposes the cash proceeds of any then proposed Incremental Equivalent Ratio Amount Indebtedness thereof and with respect to the calculation of the Incremental Equivalent Ratio Amount, without taking into account any Indebtedness that constitutes concurrent draws under the ABL Facility), exceed (A) the Incremental Repayment Amount plus (B) such additional amount (the "**Incremental Equivalent Ratio Amount**" and, Indebtedness incurred using the Incremental Equivalent Ratio Amount, "**Incremental Equivalent Ratio Amount Indebtedness**") that would result (I) if such Indebtedness is secured by a Lien on the Collateral that is pari passu with the Liens securing the Obligations, the First Lien Net Leverage Ratio is not greater than either 2.00 to 1.00, (II) if such Indebtedness is secured by a Lien on the Collateral that is junior to the Liens securing the Obligations, the Senior Secured Leverage Ratio is not greater than 3.00 to 1.00 and (III) if such Indebtedness is unsecured or secured by assets that do not constitute Collateral, the Total Net Leverage Ratio is not greater than 3.50 to

1.00, and in the case of each of the foregoing clauses (I), (II) and (III), determined as of the most recently ended Test Period and on a *pro forma* basis in accordance with Section 1.07 and including a *pro forma* application of the net proceeds therefrom (excluding for netting purposes the cash proceeds of any then proposed Incremental Equivalent Ratio Amount Indebtedness and, with respect to the calculation of the Incremental Ratio Amount, without taking into account any concurrent draws under the ABL Facility), as if the additional Indebtedness incurred pursuant to this clause (B) had been incurred and the application of the proceeds therefrom has occurred at the beginning of such Test Period; *provided* the aggregate amount of Permitted Ratio Debt and Incremental Equivalent Ratio Amount Indebtedness, collectively, incurred by Restricted Subsidiaries that are not Loan Parties shall not exceed the greater of (a) $60.0 million and (b) 35.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated after giving *pro forma* effect thereto;

(2) such Permitted Incremental Equivalent Debt will not have a final maturity date prior to the Maturity Date of the Closing Date Term Loans and will not have a shorter Weighted Average Life to Maturity than the Closing Date Term Loans;

(3) any Permitted Incremental Equivalent Debt shall not be guaranteed by any Subsidiaries of the Borrower other than the Subsidiary Guarantors and any Restricted Subsidiaries of the Borrower that provide guarantees for such Permitted Incremental Equivalent Debt shall be Subsidiary Guarantors;

(4) any mandatory prepayments of:

(a) any Permitted Incremental Equivalent Debt that comprises junior lien or unsecured notes or loans may not be made except to the extent that prepayments of such debt are (i) permitted hereunder and (ii) to the extent required hereunder or pursuant to the terms of any Permitted Incremental Equivalent Debt that is secured on a *pari passu* basis with the Closing Date Term Loans, first made or offered to the Loans and any such Permitted Incremental Equivalent Debt that is secured on a *pari passu* basis with the Closing Date Term Loans; and

(b) any Permitted Incremental Equivalent Debt that is secured on a *pari passu* basis with the Term Loans shall be made on a pro rata basis or less than pro rata basis (but not greater than a pro rata basis) with the Closing Date Term Loans (in each case, other than pursuant to a refinancing transaction permitted hereunder or with respect to greater than pro rata payments to an earlier maturing tranche);

(5) if such Permitted Incremental Equivalent Debt is secured:

(a) such Permitted Incremental Equivalent Debt is not secured by any assets or property of the Borrower or any Restricted Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of a letter of credit issuer or similar “fronting” lender);

(b) if such Permitted Incremental Equivalent Debt is secured on a *pari passu* basis or junior basis to the Closing Date Term Loans, a Debt Representative acting on behalf of the holders of such Permitted Incremental Equivalent Debt has become party to or is otherwise subject to the provisions of the Applicable Intercreditor Agreement;

(c) the terms and conditions (other than (x) pricing, rate floors discounts, fees, premiums and optional prepayment or redemption provisions and (y) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness or to the extent any such covenant or other provision is added for the benefit of the Term Facility) shall not be in the good faith determination of the Borrower materially less favorable (when taken as a whole) to the Borrower than the terms and conditions of the Loan Documents (when taken as a whole); and

(d) does not have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except customary asset sale or change of control provisions that provide for the prior payment in full of the Term Loans and other Obligations), in each case on or prior to the Latest Maturity Date at the time such Indebtedness is incurred.

The incurrence of any Permitted Incremental Equivalent Debt shall be subject to the satisfaction of the applicable conditions set forth in Section 2.14(6), except that Permitted Incremental Equivalent Debt (i) will not be subject to the MFN Protection Provisions except to the extent such Permitted Incremental Equivalent Debt is Qualifying Term Loans (in which case, such MFN Protection Provisions shall apply for the period commencing on the Closing Date until the eighteen (18) month anniversary thereof) and (ii) may be incurred or issued in the form of a Qualifying Bridge Facility, in which case, clauses (2) and (4)(d) of the first proviso in this definition shall not prohibit the inclusion of customary terms for "bridge" facilities, including customary mandatory prepayment, repurchase or redemption provisions.

"**Permitted Indebtedness**" means Indebtedness permitted to be incurred in accordance with Section 7.02.

"**Permitted Investments**" means:

(1) any Investment in or among the Borrower and its Restricted Subsidiaries; *provided* that the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties shall not exceed (other than with respect to ordinary course Investments and Investments in the form of secured Indebtedness owed from Non-Loan Parties to Loan Parties) the greater of (a) $90.0 million and (b) 50.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated after giving pro forma effect thereto;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Restricted Subsidiary in any Person (directly or through entities that will be Restricted Subsidiaries but are not required to become Guarantors), if as a result of such Investment (i) such Person becomes a Restricted Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, together with any other Investments in a Restricted Subsidiary necessary to consummate the foregoing (a "**Permitted Acquisition**"); *provided* that:

(i) to the extent required by the Collateral and Guarantee Requirement, after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.11,

(ii) after giving effect to any such Permitted Acquisition, the Borrower shall be in compliance with the covenant set forth in Section 6.17,

(iii) after giving effect to such Permitted Acquisition, the Total Net Leverage Ratio would be equal to or less than 2.00 to 1.00;

(b) any Investment held by such Person that is acquired pursuant to such Permitted Acquisition; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date and, with respect to any such Investment in an amount in excess of $15.0 million, set forth on Schedule 1.01(2) or made pursuant to binding commitments in effect on the Closing Date or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date or contemplated on the Closing Date; *provided* that the amount of any such Investment or binding commitment may be increased, extended, modified, replaced, reinvested or renewed, (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;

(6) any Investment acquired by the Borrower or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at the time outstanding not to exceed the greater of (a) $40.0 million and (b) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect in accordance with Section 1.07 thereto (with the amount of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided*, *however*, that if any Investment pursuant to this clause (8) is made in any Person that is not a Restricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above (to the extent permitted thereunder) and will cease to have been made pursuant to this clause (8) for so long as such Person continues to be a Restricted Subsidiary;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; *provided* that such Equity Interests will not increase the Available Amount;

(10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 6.19(b)(3), (4), (7), (8), (10), (12), (14), (16), (17), (18), (19), (20), (23) and (24);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or similar assets or the licensing or contribution of IP Rights pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of Cash Equivalents or marketable securities), not to exceed the greater of (a) $50.0 million and (b) 27.50% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment");

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase or indemnity obligation pursuant to a Securitization Repurchase/Indemnity Obligation (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of $20.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contacts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent otherwise permitted hereunder;

(23) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Permitted Investments made pursuant to this clause (23) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed the greater of (x) $40.0 million and (y) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect in accordance with Section 1.07 thereto (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided*, *however*, that if any Investment pursuant to this clause (23) is made in any Person that is an Unrestricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above to the extent permitted thereunder and will cease to have been made pursuant to this clause (23) for so long as such Person continues to be a Restricted Subsidiary;

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Borrower and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens";

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(33) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 1.75 to 1.00; *provided* that no Event of Default under Section 8.01(1) or 8.01(6) (solely with respect to the Borrower) then exists or shall have occurred or be continuing after giving effect to such Investment;

(34) Permitted Bond Hedge Transactions;

(35) any Investment made by any Restricted Subsidiary that is not a Loan Party to the extent that such Investment (i) does not constitute a sale, transfer or disposition of IP Rights of such Restricted Subsidiary, (ii) is made to Person that is not a Loan Party, a Subsidiary of a Loan Party or an Affiliate of a Loan Party and (iii) is financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary permitted under this Agreement;

(36) Investments in joint ventures having an aggregate fair market value, taken together with all other Permitted Investments made pursuant to this clause (36) that are at the time outstanding, not to exceed the greater of (x) $40.0 million and (y) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided, however*, that if any Investment pursuant to this clause (36) is made in any Person that is not a Restricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment will thereafter be deemed to have been made pursuant to clause (1) above to the extent permitted thereunder and will cease to have been made pursuant to this clause (36) for so long as such Person continues to be a Restricted Subsidiary;

(37) any Investment made by any Restricted Subsidiary that is not a Loan Party in a Person that is not a Loan Party, and will not become a Loan Party upon the making of such Investment, to the extent such Investments are funded with amounts attributable to the cash flow of the Restricted Subsidiary that is not a Loan Party; and

(38) Investments in connection with any Permitted Reorganization Transaction or IPO Reorganization Transaction.

For purposes of determining compliance with this definition, (A) an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption, (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments, the Borrower may, in its sole discretion, classify or reclassify such Investment (or any portion thereof) in any manner that complies with this definition and Section 7.05 and (C) in the event an Investment (or any portion thereof) is made pursuant to a Fixed Amount under this definition, such Investment will cease to be made for the purposes of such Fixed Amount but will be deemed made as an Incurrence Based Amount from and after the first date on which the Borrower or such Restricted Subsidiaries could have made such Investment as an Incurrence Based Amount (it being understood and agreed that such reclassification shall be automatic if at the end of any fiscal quarter such reclassification would then be permitted).

"**Permitted Junior Priority Refinancing Debt**" means any Credit Agreement Refinancing Indebtedness that is secured on a junior lien basis to the Closing Date Term Loans.

"**Permitted Liens**" means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers' compensation laws, unemployment insurance, health, disability or employee benefits, other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) securing reimbursement or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics' or other similar Liens (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions disclosed on current surveys (or those that would have been disclosed by current surveys if the same were not obtained), encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties imposed by law or arising in the ordinary course of business or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person;

(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4), (13), (14) (other than clause (14)(b)(i)(B)), (23), (25) or (31) of Section 7.02(b); *provided* that:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that (x) is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), *plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or (y) serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under such clause (4) or (13) of Section 7.02(b);

(b) Liens securing obligations relating to Indebtedness or Disqualified Stock permitted to be incurred pursuant to such clause (23) extend only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) if any such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, they will be subject to an Applicable Intercreditor Agreement, as applicable;

(e) [reserved];

(f) In the case of Liens securing Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (14)(b) of Section 7.02(b) and to the extent secured on the Collateral and secured on a pari passu or junior basis with the Closing Date Term Loans, together with any Refinancing Indebtedness in respect thereof, the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement;

(g) In the case Liens securing Indebtedness incurred under clause (25) of Section 7.02(b), together with any Refinancing Indebtedness in respect thereof, the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement, which shall provide that (i) the Liens on the ABL Priority Collateral (as such term is defined in the ABL Intercreditor Agreement) securing such Indebtedness may be pari passu or senior to the Liens on the ABL Priority Collateral (as such term is defined in the ABL Intercreditor Agreement) securing the Closing Date Term Loans and (ii) the Liens on the Term Priority Collateral (as such term is defined in the ABL Intercreditor Agreement) securing such Indebtedness shall be junior to the Liens on the Term Priority Collateral (as such term is defined in the ABL Intercreditor Agreement) securing the Closing Date Term Loans; and

(h) Liens securing Permitted Ratio Debt incurred pursuant to clause (31) of Section 7.02(b); *provided* that to the extent such Liens are secured on the Collateral, such Liens shall be secured on a pari passu or junior lien basis with the Closing Date Term Loans, together with any Refinancing Indebtedness in respect thereof, the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement.

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (including Liens in effect on the Closing Date securing Indebtedness permitted under Section 7.02(b)(3));

(9) [reserved];

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation; *provided further* that such Liens are limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after acquired-property) that secured the obligations to which such Liens relate;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another Restricted Subsidiary permitted to be incurred in accordance with Section 7.02;

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) that do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor; *provided* that such Liens securing Indebtedness for borrowed money incurred by a Loan Party to the extent permitted hereunder is expressly subordinated to the Liens securing the Obligations;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (7), (8) or (10) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) that secured the original Lien (plus improvements and accessions on such property) and proceeds and products thereof and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (7), (8) or (10) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees, defeasance costs, underwriting discounts or similar fees) and premiums (including tender premiums and accrued and unpaid interest), related to such refinancing, refunding, extension, renewal or replacement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens securing obligations in an aggregate principal amount at any one time outstanding not to exceed the greater of (a) $90.0 million and (b) 50.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto; *provided*, that if such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04 in each case, solely to the extent such Investment or sale, disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(31) ground leases, leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) Liens in connection with any Sale-Leaseback Transaction(s);

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof;

(39) [reserved];

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with in all material respects;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning by-laws and other land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(47) Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Incremental Equivalent Debt, (ii) Permitted Equal Priority Refinancing Debt, (iii) Permitted Junior Priority Refinancing Debtor (iv) Permitted Debt Exchange Notes, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof; *provided* that the extent secured on the Collateral and secured on a pari passu or junior basis with the Closing Date Term Loans, together with any Refinancing Indebtedness in respect thereof, the Debt Representative in respect of such Indebtedness shall have entered into the Applicable Intercreditor Agreement;

(48) Liens securing obligations relating to any Indebtedness permitted to be incurred pursuant to clause (29) of Section 7.02(b); *provided*, that such Indebtedness is not secured by assets constituting Collateral;

(49) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Requirements of Law in the ordinary course of business;

(50) [reserved];

(51) [reserved];

(52) Liens securing obligations pursuant to any Indebtedness permitted to be incurred pursuant to clause (34) of Section 7.02(b); *provided*, that if such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement;

(53) Liens securing obligations pursuant to any Indebtedness permitted to be incurred pursuant to clause (12)(a) of Section 7.02(b); *provided* that if such Liens are secured by the Collateral on a *pari passu* basis with, or junior basis to, the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement; and

(54) Liens securing obligations pursuant to any Indebtedness permitted to be incurred pursuant to clause (33) of Section 7.02(b); *provided* that if such Liens are secured by the Collateral on a junior basis to the Liens that secure the Closing Date Term Loans, the Debt Representative in respect thereof shall have entered into the Applicable Intercreditor Agreement.

For purposes of determining compliance with this definition, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Borrower will, in its sole discretion, be entitled to divide, classify or reclassify, in whole or in part, any such Lien (or any portion thereof) among one or more such categories or clauses in any manner that complies with this definition.

If any Liens securing obligations are incurred to refinance liens securing obligations initially incurred in reliance on a Basket measured by reference to a percentage of Adjusted EBITDA, and such refinancing would cause the percentage of Adjusted EBITDA to be exceeded if calculated based on the Adjusted EBITDA on the date of such refinancing, such percentage of Adjusted EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, plus the related costs incurred or payable in connection with such refinancing and if any Liens securing obligations are incurred to refinance liens securing obligations initially incurred in reliance on a Basket measured by a fixed dollar amount, such fixed dollar Basket will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, plus the related costs incurred or payable in connection with such refinancing.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest on such Indebtedness.

"**Permitted Parent**" means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

"**Permitted Ratio Debt**" means Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary; *provided* that:

(a) such Indebtedness (other than a Qualifying Bridge Facility) does not mature prior the Latest Maturity Date of the Closing Date Term Loans at the time such Indebtedness is incurred, and such Indebtedness (other than a Qualifying Bridge Facility) does not have a shorter Weighted Average Life to Maturity than the Closing Date Term Loans then outstanding,

(b) for period commencing on the Closing Date through the eighteen (18) month anniversary thereof, such Indebtedness shall be subject to the MFN Protection Provisions to the extent such Indebtedness is in the form of Qualifying Term Loans,

(c) [reserved],

(d) the amount of such Indebtedness of the Borrower or Indebtedness or Preferred Stock of any Restricted Subsidiary shall not exceed, in the aggregate, the sum of (x) [reserved], plus (y) additional amounts, so long as, (I) in the case of Preferred Stock of any Restricted Subsidiary or Indebtedness of the Borrower or any Restricted Subsidiary that is unsecured or secured by assets not constituting Collateral, then the Total Net Leverage Ratio does not exceed 3.50 to 1.00, (II) in the case of Indebtedness of the Borrower or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary secured by a Lien on the Collateral that is junior to the Liens securing the Obligations, the Senior Secured Leverage Ratio does not exceed 3.00 to 1.00 or (III) in the case of Indebtedness secured by a Lien on the Collateral that is pari passu to the Liens securing the Closing Date Term Loans, the First Lien Net Leverage Ratio does not exceed 2.00 to 1.00, and in the case of each of the foregoing clauses (I), (II) and (III), determined as of the most recently ended Test Period and on a *pro forma* basis in accordance with Section 1.07 and including a *pro forma* application of the net proceeds therefrom; *provided* the aggregate amount of such Indebtedness and Incremental Equivalent Ratio Amount Indebtedness incurred pursuant to clause (d)(y), collectively, by Restricted Subsidiaries that are not Loan Parties shall not exceed the greater of (a) $60.0 million and (b) 35.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated after giving *pro forma* effect thereto, and

(e) such Indebtedness may be secured to the extent such Liens constitute Permitted Liens in accordance with the definition thereof.

To the extent the Borrower or any Restricted Subsidiary issues any Disqualified Stock or any Restricted Subsidiary issues any Preferred Stock as Permitted Ratio Debt, solely for the purpose of calculating the First Lien Net Leverage Ratio, Senior Secured Leverage Ratio and Total Net Leverage Ratio under clause (d) above, the Consolidated Total Debt shall also include all such Disqualified Stock and Preferred Stock issued pursuant to this definition and under Section 7.02(14)(b)(ii)(I) and then outstanding.

"**Permitted Reorganization Transaction**" means any re-organization or other similar activities among the Borrower and the Restricted Subsidiaries related to Tax planning and re-organization, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with the Collateral and Guarantee Requirement and Section 6.11, (b) taken as a whole, the value of the Collateral securing the Obligations and the Guarantees by the Guarantors of the Obligations are not materially reduced and (c) the Liens in favor of the Administrative Agent for the benefit of the Secured Parties under the Security Documents are not materially impaired.

"**Permitted Warrant Transaction**" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower's or a Parent Company's common stock sold by the Borrower or a Parent Company substantially concurrently with any purchase by the Borrower of a related Permitted Bond Hedge Transaction.

"**Person**" means any individual, corporation, exempted company, limited liability company, partnership, exempted limited partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Plan**" means any material "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"**Planned Expenditures**" has the meaning specified in the definition of Excess Cash Flow.

"**Platform**" has the meaning specified in Section 6.02.

"**Pledged Collateral**" has the meaning specified in the Security Agreement.

"**Position Representation**" has the meaning specified in Section 8.04(2).

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

"**Prime Rate**" means the prime commercial rate of interest per annum last quoted by *The Wall Street Journal* (or another national publication selected by the Administrative Agent) as its "prime rate".

"**Private-Side Information**" means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

"**Pro Forma Financial Statements**" has the meaning specified in Section 5.05(1)(b).

"**Pro Rata Share**" means (i) with respect to all payments, computations and other matters relating to the Term Loan of a given Class of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Exposure of such Class of such Lender at such time and the denominator of which is the aggregate Term Loan Exposure of such Class of all Lenders at such time; (ii) with respect to all payments, computations and other matters relating to the Incremental Term Loans of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Incremental Term Loan Exposure of such Lender at such time and the denominator of which is the aggregate Incremental Term Loan Exposure of all Lenders at such time.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Company Costs**" means charges associated with, or in anticipation of, or preparation for, (i) establishing compliance with the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith and charges relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, (ii) the rules of national securities exchange companies with listed equity or debt securities, (iii) employees', consultants', directors' or managers' compensation, fees and expense reimbursement, (iv) relating to investor relations, shareholder meetings and reports to shareholders or debtholders, (v) directors' and officers' insurance and other executive costs, (vi) legal and other professional fees and listing fees, and (vii) other expenses arising out of or incidental to any of the foregoing.

"**Public Lender**" means Lenders that do not wish to receive Private-Side Information.

"**Public-Side Information**" means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal, state or other applicable securities laws), and (ii) at any time on or after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

"**Published LIBOR**" has the meaning specified in the definition of "Eurodollar Rate."

"**Purchase Money Obligations**" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement or property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 10.28.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Stock.

"**Qualified Holding Company Debt**" means unsecured Indebtedness of Holdings that:

(1) is not subject to any Guarantee by any Subsidiary of Holdings (including the Borrower),

(2) will not mature prior to the date that is six (6) months after the Latest Maturity Date in effect on the date of issuance or incurrence thereof,

(3) has no scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (5) below),

(4) does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the later to occur of (i) the date that is four (4) years from the date of the issuance or incurrence thereof and (ii) the date that is 180 days after the Latest Maturity Date in effect on the date of such issuance or incurrence, and

(5) has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive (taken as a whole) than those set forth in this Agreement (other than provisions customary for senior discount notes of a holding company);

provided that any such Indebtedness shall constitute Qualified Holding Company Debt only if immediately after giving effect to the issuance or incurrence thereof and the use of proceeds thereof, no Event of Default shall have occurred and be continuing.

"**Qualified Proceeds**" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"**Qualified Securitization Facility**" means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower) or (2) constituting a receivables financing facility.

"**Qualifying Bridge Facility**" means customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent financing that does not mature earlier than the Latest Maturity Date for the Closing Date Term Loans.

"**Qualifying IPO**" means (a) the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of Equity Interests in the IPO Entity, (b) any transaction or series of transactions that results in any common Equity Interests of the IPO Entity being publicly traded on any United States national securities exchange or over the counter market, or any analogous exchange or market in Canada, the United Kingdom or any member country of the European Union or (c) the acquisition, purchase, merger or combination of the IPO Entity, by, or with, a publicly traded special acquisition company.

"**Qualifying Lender**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Qualifying Term Loans**" has the meaning specified in Section 2.14(8).

"**Rating Agencies**" means Moody's and S&P, or if Moody's or S&P (or both) are not making ratings on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody's or S&P (or both), as the case may be.

"**Ratio Amount**" has the meaning specified in the definition of "Permitted Incremental Amount".

"**Refinance**" has the meaning assigned in the definition of "Refinancing Indebtedness" and "**Refinancing**" and "**Refinanced**" have meanings correlative to the foregoing.

"**Refinanced Debt**" has the meaning assigned to such term in the definition of "Refinancing Indebtedness."

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower and (b) each Additional Lender and Lender that agrees to provide any portion of the Refinancing Loans or Refinancing Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.

"**Refinancing Commitments**" means any Refinancing Term Commitments.

"**Refinancing Indebtedness**" means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("**Refinance**") any Indebtedness, Disqualified Stock or Preferred Stock, including any Refinancing Indebtedness, so long as:

(1) (a) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock, as applicable, being refinanced except to the extent permitted under Section 1.02(10), *plus* (b) any accrued and unpaid interest on, the Indebtedness, the amount of any accrued and unpaid dividends on, the Preferred Stock or the liquidation preference of the Disqualified Stock, *plus* any accrued and unpaid dividends on, the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "**Refinanced Debt**"), *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the "**Incremental Amounts**");

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt;

(3) to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness, such Refinancing Indebtedness is subordinated in right of payment to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to the Applicable Intercreditor Agreement or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property); *provided* that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

provided further that (x) clause (2) of this definition will not apply to any Refinancing Indebtedness other than Indebtedness, Disqualified Stock and Preferred Stock incurred under clauses (2), (14), (25), (29), (30) and (31) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof) and (y) Refinancing Indebtedness may be incurred in the form of a Qualifying Bridge Facility which does not satisfy the requirements of clause (2) above.

"**Refinancing Loans**" means any Refinancing Term Loans.

"**Refinancing Term Commitments**" means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.

"**Refunding Capital Stock**" has the meaning specified in Section 7.05(b)(2).

"**Register**" has the meaning specified in Section 10.07(c).

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Regulated Bank**" means an Approved Commercial Bank that is (i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation; (ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913; (iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors of the Federal Reserve System under 12 CFR part 211; (iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (iii); or (v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

"**Rejection Notice**" has the meaning specified in Section 2.05(2)(g).

"**Related Business Assets**" means assets (other than Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.

"**Related Indemnified Person**" of an Indemnitee means (1) the respective directors, officers or employees of such Indemnitee and (2) the respective agents of such Indemnitee, in the case of this clause (2), acting at the instructions of such Indemnitee.

"**Related Person**" means, with respect to any Person, (a) any Affiliate of such Person and (b) the respective directors, partners, officers, employees, agents and other representatives of such Person or any of its Affiliates.

"**Release**" means any release, spill, emission, discharge, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment.

"**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.

"**Replaced Loans**" has the meaning specified in Section 2.20.

"**Replacement Loans**" has the meaning specified in Section 2.20.

"**Reportable Event**" means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period to the PBGC has been waived.

"**Repricing Transaction**" means (1) the incurrence by the Borrower of any financing (including any new or additional Term Loans under this Agreement, whether incurred directly or by way of the conversion of the Closing Date Term Loans into a new tranche of replacement Term Loans under this Agreement) (a) having an All-In Yield that is less than the All-In Yield applicable to the Closing Date Term Loans and (b) the proceeds of which are used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, the outstanding principal of the Closing Date Term Loans or (2) any effective reduction in the All-In Yield applicable to the Closing Date Term Loans (e.g., by way of amendment, waiver or otherwise).

"**Required Facility Lenders**" means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of the (a) aggregate principal amount of outstanding Loans under such Facility or Facilities and (b) aggregate unused Commitments under such Facility or Facilities; *provided* that (i) to the same extent specified in Section 10.07(i) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Facility Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders and (ii) the portion of outstanding Loans and the unused Commitments of any such Facility, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

"**Required Lenders**" means, as of any date of determination, Lenders having more than 50% of the aggregate Term Loan Exposure; *provided* that (i) the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of the "Required Lenders" and (ii) any determination of Required Lenders shall be subject to the limitations set forth in Section 10.07(h) with respect to Affiliated Lenders.

"**Requirements of Law**" means, with respect to any Person, any statutes, laws, treaties, rules, regulations, statutory instruments, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Rescindable Amount**" has the meaning as defined in Section 2.12(3)(g)

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

"**Resignation Effective Date**" has the meaning specified in Section 9.11.

"**Responsible Officer**" means, with respect to a Person, a director, the general partner, the chief executive officer, chief operating officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Solely for purposes of notices given to Article II, any other officer or employee of the applicable Loan Party so designated as a Responsible Officer by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower or the Borrower, as the context may require.

"**Restricted Investment**" means any Investment other than any Permitted Investment(s).

"**Restricted Payment**" has the meaning specified in Section 7.05.

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided* that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Restricted Subsidiary; *provided further* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of "Restricted Subsidiary." Wherever the term "Restricted Subsidiary" is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (but which transactions may include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with this Agreement).

"**Retained Excess Cash Flow Amount**" means, at any date of determination, an amount, no less than zero and determined on a cumulative basis, that is equal to the aggregate cumulative sum of Excess Cash Flow that is not required to be applied to make an ECF Payment under Section 2.05(2) for each Excess Cash Flow Period ending after the Closing Date.

"**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale-Leaseback Transaction**" means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a Person other than the Borrower or any Restricted Subsidiary in contemplation of such leasing.

"**Same Day Funds**" means disbursements and payments in immediately available funds.

"**Sanctioned Countries**" has the meaning specified in Section 5.17.

"**Sanctioned Persons**" has the meaning specified in Section 5.17.

"**Sanctions**" has the meaning specified in Section 5.17.

"**Screened Affiliate**" means any Affiliate of a Lender (i) that makes investment decisions independently from such Lender and any other Affiliate of such Lender that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such Lender and any other Affiliate of such Lender that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Borrower or its Subsidiaries, (iii) whose investment policies are not directed by such Lender or any other Affiliate of such Lender that is acting in concert with such Lender in connection with its investment in the Obligations, and (iv) whose investment decisions are not influenced by the investment decisions of such Lender or any other Affiliate of such Lender that is acting in concert with such Lenders in connection with its investment in the Obligations.

"**SDN**" has the meaning specified in Section 5.17.

"**SEC**" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Cash Management Agreement**" means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Restricted Subsidiary and a Cash Management Bank; and designated in writing by the Cash Management Bank and the Borrower to the Administrative Agent as a "Secured Cash Management Agreement."

"**Secured Hedge Agreement**" means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is entered into by and between any Loan Party or Restricted Subsidiary and (i) any Hedge Bank or (ii) any counterparty that is a party to a Hedge Agreement with a Loan Party and at the Borrower's request, delivers to the Administrative Agent a written notice (1) appointing the Administrative as its agent under the applicable Loan Documents and (2) agreeing to be bound by Article IX and Sections 10.04, 10.05, 10.16 and 10.17 as if such Person were a Lender; *provided* that any designation pursuant to this clause (ii) shall not create in favor of such Person (x) any rights in connection with management or release of Collateral or the obligations of any Loan Party under the Loan Documents or (y) any voting or approval rights under the Loan Documents.

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each counterparty to a Secured Hedge Agreement, each Cash Management Bank party to a Secured Cash Management Agreement, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(2) or 9.07.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securitization Assets**" means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

"**Securitization Facility**" means any transaction or series of securitization financings that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

"**Securitization Fees**" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold or amounts borrowed in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

"**Securitization Repurchase/Indemnity Obligation**" means any obligation of a seller or servicer of Securitization Assets in a Qualified Securitization Facility to repurchase, indemnify or otherwise make payment with respect to Securitization Assets arising as a result of a breach of representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"**Securitization Subsidiary**" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"**Security Agreement**" means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

"**Senior Secured Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt of the Borrower and its Restricted Subsidiaries outstanding on the last date of such Test Period to (b) Adjusted EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, in each case calculated on a *pro forma basis* with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"**Short Derivative Instrument**" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"**Significant Subsidiary**" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

"**Similar Business**" means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date.

"**SOFR Early Opt-in"** means the Administrative Agent and the Borrower have elected to replace the Adjusted Eurodollar Rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(1) and paragraph (1) of the definition of "Benchmark Replacement".

"**Solicited Discount Proration**" has the meaning specified in Section 2.05(1)(e)(D)(3).

"**Solicited Discounted Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solicited Discounted Prepayment Notice**" means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(D) substantially in the form of Exhibit L.

"**Solicited Discounted Prepayment Offer**" means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Administrative Agent's receipt of a Solicited Discounted Prepayment Notice.

"**Solicited Discounted Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(D)(1).

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date:

(1) the sum of the liabilities of such Person (including contingent liabilities), on a consolidated basis, does not exceed the present fair saleable value of the present assets of such Person, on a consolidated basis,

(2) the fair value of the property of such Person, on a consolidated basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person, on a consolidated basis,

(3) the capital of such Person, on a consolidated basis, is not unreasonably small in relation to its business as contemplated on such date and

(4) such Person has not incurred and does not intend to incur, or believe that it will incur, debts including current obligations beyond their ability to pay such debts as they become due (whether at maturity or otherwise).

The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances as of such date, would reasonably be expected to become an actual and matured liability.

"**SPC**" has the meaning specified in Section 10.07(g).

"**Specified Discount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Amount**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Prepayment Notice**" means a written notice of the Borrower's Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

"**Specified Discount Prepayment Response**" means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

"**Specified Discount Prepayment Response Date**" has the meaning specified in Section 2.05(1)(e)(B)(1).

"**Specified Discount Proration**" has the meaning specified in Section 2.05(1)(e)(B)(3).

"**Specified Equity Contribution**" means the "Cure Amount" as defined in the ABL Credit Agreement.

"**Specified Transaction**" means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP),

(3) any Investment that results in a Person becoming a Restricted Subsidiary,

(4) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

(5) any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,

(6) any Asset Sale (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period, including any modification of any Indebtedness from cash interest to payment-in-kind,

(8) any borrowing of Incremental Term Loans or Permitted Incremental Equivalent Debt or

(9) any other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"**Sponsor**" means Sycamore Partners Management, L.P. and any of its respective Affiliates and funds or partnerships managed or advised by it or any of its respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Adjusted Eurodollar Rate, for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the FRB). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Submitted Amount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Submitted Discount**" has the meaning specified in Section 2.05(1)(e)(C)(1).

"**Subordinated Indebtedness**" means any Indebtedness for borrowed money of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, exempted company, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, exempted limited partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"**Subsidiary Guarantor**" means any Guarantor other than Holdings and any other Parent Company of the Borrower.

"**Successor Borrower**" has the meaning specified in Section 7.03(4).

"**Successor Holdings**" has the meaning specified in Section 7.03(5).

"**Supplemental Administrative Agent**" and "**Supplemental Administrative Agents**" have the meanings specified in Section 9.15(1).

"Supported QFC" has the meaning specified in Section 10.28.

"**Swap Obligation**" has the meaning specified in the definition of "Excluded Swap Obligation."

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

"**Tax Group**" has the meaning specified in Section 7.05(b)(14)(b).

"**Tax Indemnitee**" as defined in Section 3.01(5).

"**Term Borrowing**" means a Borrowing of any Term Loans.

"**Term Commitment**" means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment, (iv) an Extension Amendment or (v) an amendment in respect of Replacement Loans. The initial amount

of each Term Lender's Term Commitment is its Term Commitment as of the Closing Date or, otherwise, in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption), Incremental Amendment, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans pursuant to which such Lender shall have assumed its Commitment, as the case may be.

"**Term Facility**" means any Facility consisting of Term Loans or Term Commitments.

"**Term Intercreditor Agreement**" means the Term Intercreditor Agreement substantially in the form of Exhibit G-2.

"**Term Lender**" means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

"**Term Loan**" means any Closing Date Term Loan, Incremental Term Loan, Refinancing Term Loan, Extended Loan or Replacement Loan, as the context may require.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Commitment, or, with regard to any Incremental Amendment at any time prior to the making of the applicable Incremental Term Loans thereunder, the Term Loan Exposure of any Lender with respect to such Incremental Term Facility shall be equal to such Lender's Incremental Term Loan Commitment thereunder.

"**Term Loan Increase**" has the meaning specified in Section 2.14(1).

"**Term Note**" means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

"**Term SOFR**" means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Termination Conditions**" means, the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements and Cash Management Obligations under Secured Cash Management Agreements).

"**Test Period**" in effect at any time means the Borrower's most recently ended four consecutive fiscal quarters (taken as one accounting period) for which, subject to Section 1.07(1), financial statements were delivered (or were required to be delivered) pursuant to Section 6.01(1) or (2), as applicable.

"**Threshold Amount**" means $50 million.

"**Total Assets**" means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower).

"**Total Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt of the Borrower and its Restricted Subsidiaries outstanding as of the last day of such Test Period to (b) Adjusted EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

"**Traded Securities**" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"**Transaction Expenses**" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

"**Transactions**" means, collectively, (a) the funding of the Closing Date Term Loans, (b) the execution and delivery of the Loan Documents and the amendment to the ABL Credit Agreement, (c) the consummation of the Closing Date Refinancing, (d) the consummation of the Closing Date Distribution, (e) the consummation of any other transactions in connection with the foregoing and (f) the payment of Transaction Expenses.

"**Treasury Capital Stock**" has the meaning assigned to such term in Section 7.05(b)(2)(a).

"**Type**" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form 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.

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"**United States**" and "**U.S**." mean the United States of America.

"**United States Tax Compliance Certificate**" has the meaning specified in Section 3.01(3)(b)(iii).

"**Unrestricted Subsidiary**" means (i) each Subsidiary of the Borrower listed on Schedule 1.02 on the Closing Date, (ii) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 6.18 subsequent to the date hereof or the ABL Credit Agreement and (iii) any Subsidiary of an Unrestricted Subsidiary; *provided*, that (a) no Restricted Subsidiary that holds any item of intellectual property that is material to the business, taken as a whole, of the Borrower and its Restricted Subsidiaries (as determined by the Borrower in good faith) (such intellectual property being referred to herein as "**Material IP**") may be designated as an Unrestricted Subsidiary during the time when it holds such material intellectual property and (b) in no event may Holdings or the Borrower be designated as an Unrestricted Subsidiary.

"**U.S. Lender**" means any Lender that is not a Foreign Lender.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.28.

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**Verification Covenant**" has the meaning specified in Section 8.04(2).

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied by* the amount of such payment, *by*

(2) the sum of all such payments; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "**Applicable Indebtedness**"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"**wholly owned**" means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors' qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

"**Withdrawal Liability**" means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan.

"**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;

(b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term "including" is by way of example and not limitation.

(5) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(6) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(7) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(8) The word "or" is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words "exists", "is continuing" or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived. If, prior to the taking of any action under Section 8.02 (or the occurrence of any event set forth in the proviso thereto), any Default or Event of Default occurs due to (i) the failure by any Loan Party to take any action by a specified time, such Default or Event of Default shall be deemed to have been cured at the time, if any, that the applicable Loan Party takes such action or (ii) the taking of any action by any Loan Party that is not then permitted by the terms of this Agreement or any other Loan Document, such Default or Event of Default shall be deemed to be cured on the earlier to occur of (x) the date on which such action would be permitted at such time to be taken under this Agreement and the other Loan Documents pursuant to an applicable amendment or waiver permitting such action and (y) the date on which such action is unwound or otherwise modified to the extent necessary for such revised action to be permitted at such time by this Agreement and the other Loan Documents; *provided*, that an Event of Default resulting from the failure to deliver a notice pursuant to such Section 6.03(1) shall cease to exist and be cured in all respects if the Default or Event of Default giving rise to such notice requirement shall have ceased to exist and/or be cured.

Notwithstanding anything to the contrary in this Section 1.02(9), an Event of Default (the "***Initial Default***") may not be cured pursuant to this Section 1.02(9):

(a) if the taking of any action by any Loan Party or Subsidiary of a Loan Party that is not permitted during, and as a result of, the continuance of such Initial Default directly results in the cure of such Initial Default and the applicable Loan Party or Subsidiary had actual knowledge at the time of taking any such action that the Initial Default had occurred and was continuing;

(b) in the case of an Event of Default under Section 8.01(9) or (10) that directly results in material impairment of the rights and remedies of the Lenders, Collateral Agent and Administrative Agent under the Loan Documents and that is incapable of being cured;

(c) in the case of an Event of Default under Section 8.01(3) arising due to the failure to perform or observe Section 6.07 that directly results in a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which any of the Loan Parties is a party; or

(d) in the case of an Initial Default for which (i) the Borrower failed to give notice to the Agent and the Lenders of such Initial Default in accordance with Section 6.03(1) of this Agreement and (ii) the Borrower had actual knowledge of such failure to give such notice.

(10) For purposes of determining compliance with any Section of Article VII, in the event that any Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness (A) meets the criteria of one or more of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time or (B) was incurred as a Fixed Amount, but could have been incurred as an Incurrence Based Amount, such Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness shall, from and after the first date on which the Borrower or such Restricted Subsidiaries could have incurred such amount as an Incurrence Based Amount, automatically be reclassified as incurred under the applicable incurrence or ratio based provision (to the extent applicable), shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time. For purposes of determining compliance with the incurrence of any Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Credit Agreement Refinanced Debt or Refinanced Debt, respectively, the Borrower and Restricted Subsidiaries may incur an incremental principal amount of Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement (*provided* that (1) any additional Indebtedness referenced in this sentence satisfies the other applicable requirements of the definition of Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness, as applicable (with such additional amounts incurred constituting a utilization of the relevant basket or exception contained in Section 7.02(b) pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 7.01). For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio or Basket, if on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

(12) For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws), including a statutory division pursuant to Section 18-217 of the Delaware Limited Liability Company Act: (a) if any asset or property of any Person becomes the asset or property of one or more different Persons, then such asset or property shall be deemed to have been disposed of from the original Person to the subsequent Person(s) on the date such division becomes effective, (b) if any obligation or liability of any Person becomes the obligation or liability of one or more different Person(s), then the original Person shall be deemed to have been automatically released from such obligation or liability and such obligation or liability shall be deemed to have been assumed by the subsequent Person(s), in each case, on the date such division becomes effective and (c) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests on the date such division becomes effective.

Section 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Unless the context indicates otherwise, any reference to a "fiscal year" or a "fiscal quarter" shall refer to a "retail" fiscal year ending on or about January 31 or a "retail" fiscal quarter ending on or about April 30, July 31 or October 31.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable). When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

Section 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Interest Coverage Ratio, First Lien Net Leverage Ratio, Senior Secured Leverage Ratio and the Total Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.07. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, either (1) the most recently ended Test Period for which financial statements of the Borrower were delivered (or were required to be delivered) pursuant to Section 6.01(1) or (2), as applicable, or (2) the most recently ended Test Period for which internal financial statements of the Borrower are available and have been delivered to the Administrative Agent.

(2) For purposes of calculating any financial ratio or test (or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Adjusted EBITDA and the component financial definitions and/or reductions in interest expense, in each case, used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.07 as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, synergies and operating expense reductions resulting from or related to any such Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than eight fiscal quarters after the date of any such Specified Transaction (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are (i) reasonably identifiable and projected in the good faith judgment of the Borrower to result from such actions and (ii) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than eight fiscal quarters after the date of such Specified Transaction, and (b) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Adjusted EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period; *provided*, *further*, that the aggregate amount of adjustments to Adjusted EBITDA included pursuant to this Section 1.07(3), taken together with the aggregate amount of adjustments included pursuant to clause (1)(l), (1)(n), (1)(o), (1)(p)(y), (1)(q) and (1)(r) of the definition of Adjusted EBITDA, shall not exceed 25% of Adjusted EBITDA (calculated after giving effect to the adjustments set forth in Adjusted EBITDA).

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Interest Coverage Ratio, First Lien Net Leverage Ratio, Senior Secured Leverage Ratio or Total Net Leverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(5) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio, First Lien Net Leverage Ratio, Senior Secured Leverage Ratio and/or Total Net Leverage Ratio, is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Restricted Subsidiary may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, unless otherwise elected by the Borrower no *pro forma* effect shall be given to any discontinued operations (and the Adjusted EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to either (1) the most recently ended Test Period for which financial statements of the Borrower were delivered (or were required to be delivered) pursuant to Section 6.01(1) or (2), as applicable, or (2) the most recently ended Test Period for which internal financial statements of the Borrower are available and have been delivered to the Administrative Agent

(8) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating any applicable ratio, Consolidated Net Income or Adjusted EBITDA in connection with incurrence of Indebtedness, the creation of Liens, the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as restricted or unrestricted or the repayment of Indebtedness or otherwise testing availability under any Basket, (b) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, (c) determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein or (d) the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the creation of Liens, the making of any disposition, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as restricted or unrestricted or the repayment of Indebtedness, in each case in connection with a Limited Condition Transaction, the date of determination of such ratio or other provisions, determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom, determination of compliance with any representations or warranties or the satisfaction of any other conditions shall, at the option of the Borrower (Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"). If on a *pro forma* basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) such ratios and other provisions are calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date for which financial statements of the Borrower were delivered (or were required to be delivered) pursuant to Section 6.01(1) or (2), as applicable, the Borrower could have taken such action on the relevant LCT Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with unless an Event of Default under Section 8.01(1) or 8.01(6) (solely with respect to Holdings and the Borrower) shall be continuing at the time of the consummation of such Limited Condition Transaction. For the avoidance of doubt, (i) if any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Adjusted EBITDA or other components of such ratio) or other provisions at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless on such date an Event of Default pursuant to Section 8.01(1) or 8.01(6) shall be continuing. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or Basket availability with respect to any other Specified Transaction on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or Basket shall be calculated on a *pro forma basis* assuming such Limited Condition Transaction and other

transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) had been consummated on the LCT Test Date except that (other than solely with respect to the incurrence test under which such Limited Condition Transaction is being made) Adjusted EBITDA, assets and Consolidated Net Income of any target of such Limited Condition Transaction can only be used in the determination of the relevant ratios and Baskets if and when such acquisition has closed. Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or its Restricted Subsidiaries (x) incurs Indebtedness, creates Liens, makes Asset Sales, makes Investments, makes Restricted Payments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness in connection with any Limited Condition Transaction under a ratio-based Basket and (y) incurs Indebtedness, creates Liens, makes Asset Sales, Investments or Restricted Payments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness in connection with such Limited Condition Transaction under a non-ratio-based Basket (which shall occur within five Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based Basket without regard to any such action under such non-ratio-based Basket made in connection with such Limited Condition Transaction.

(9) Notwithstanding anything to the contrary herein, with respect to any amounts incurred (including the incurrence of any Fixed Incremental Amount Indebtedness) or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, pro forma compliance with any Interest Coverage Ratio test, any First Lien Net Leverage Ratio test, any Total Net Leverage Ratio test, Senior Secured Leverage Ratio test, and/or any other financial ratio or test) (any such amounts, the "***Fixed Amounts***") substantially concurrently with any amounts incurred (including the incurrence of any Ratio Amount Indebtedness) or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with any such financial ratio or test (any such amounts, the "***Incurrence Based Amounts***"), it is understood and agreed that the (i) Fixed Amounts (and any cash proceeds thereof) and (ii) any Indebtedness resulting from borrowings under the ABL Facility which occur concurrently with the incurrence of the Incurrence Based Amounts shall, in each case, be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence.

Section 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the Available Amount immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must constitute a permitted use of the Available Amount.

Section 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

Section 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the dollar amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the Interest Coverage Ratio, First Lien Net Leverage Ratio, Senior Secured Leverage Ratio and/or the Total Net Leverage Ratio the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(3) For purposes of determining compliance under any Basket under Article VII or VIII, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating net income in the Borrower's annual financial statements delivered pursuant to Section 6.01(1); *provided*, *however*, that the foregoing shall not be deemed to apply to the determination of any amount of Indebtedness. For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the Dollar equivalent of the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such 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 extended, replaced, refunded, refinanced, renewed or defeased.

Section 1.11 Interest Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

ARTICLE II

THE COMMITMENTS AND BORROWINGS

Section 2.01 The Loans. Subject to the terms and conditions set forth in Section 4.01 hereof, each Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date Term Loans denominated in Dollars in an aggregate principal amount not to exceed such Term Lender's Closing Date Term Commitment on the Closing Date. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. The Closing Date Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Term Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent which may be given by telephone; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice (*provided* that the notice in respect of the initial Term Borrowing on the Closing Date, or in connection with any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on the closing of the Acquisition or such Permitted Acquisition or other transaction, as applicable). Each such notice must be received by the Administrative Agent not later than (a) 1:00 p.m., New York time, three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Rate Loans or any conversion of Base Rate Loans to Eurodollar Rate Loans and (b) 11:00 a.m., New York time, on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (a) above may be delivered one (1) Business Day prior to the Closing Date in the case of the Closing Date Term Loans. Each such notice by the Borrower pursuant to this Section 2.02(1) must be made by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5.0 million or a whole multiple of $1.0 million in excess thereof. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $1.0 million or a whole multiple of $500,000 in excess thereof. Each Committed Loan Notice shall specify:

(i) whether the Borrower is requesting a Term Borrowing, a conversion of Term Loans from one Type to the other or a continuation of Eurodollar Rate Loans,

(ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),

(iii) the principal amount of Loans to be borrowed, converted or continued,

(iv) [reserved],

(v) the Class and Type of Loans to be borrowed or to which existing Term Loans are to be converted,

(vi) if applicable, the duration of the Interest Period with respect thereto and

(vii) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as Eurodollar Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a Eurodollar Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Eurodollar Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 1:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 for the Borrowing on the Closing Date, the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (a) crediting the account(s) of the applicable Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(3) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Lenders under the applicable Facility may require by notice to the Borrower that no Loans under such Facility may be converted to or continued as Eurodollar Rate Loans.

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. The determination of the Eurodollar Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(5) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than 5 Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans in whole or in part without premium (except as set forth in Section 2.18) or penalty; *provided* that

(i) such notice of prepayment, which shall be substantially in the form of Exhibit R, must be received by the Administrative Agent not later than 1:00 p.m., New York time, (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans;

(ii) any partial prepayment of Eurodollar Rate Loans shall be in a principal amount of $2.0 million or a whole multiple of $500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of $1.0 million or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid (and, for the avoidance of doubt, may indicate the prepayments by more than one Borrower on such date in such amounts so specified, which, individually, may be below any minimum or multiple, but which, in the aggregate amount on any given date, shall satisfy such minimum and multiple requirements). The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(b) [Reserved].

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(1)(a) if such prepayment is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of prepayment may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of such prepayment) if such condition is not satisfied.

(d) Each prepayment in respect of any Term Loans pursuant to this Section 2.05(1) may be applied to any Class of Term Loans as directed by the Borrower. Voluntary prepayments of any Class of Term Loans (including as to any Extended Loan or otherwise) permitted hereunder shall be applied in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity, including any remaining scheduled installments of principal). For the avoidance of doubt, the Borrower may (i) prepay Term Loans of any Term Loan Class pursuant to this Section 2.05 without any requirement to prepay Extended Loans that were converted or exchanged from such Term Loan Class and (ii) prepay Extended Loans pursuant to this Section 2.05 without any requirement to prepay any Term Loans that were converted or exchanged for such Extended Loans. In the event that the Borrower does not specify the order in which to apply prepayments to reduce scheduled installments of principal or as between Classes of Term Loans, the Borrower shall be deemed to have elected that such proceeds be applied to reduce the scheduled installments of principal in direct order of maturity on a *pro rata* basis among Term Loan Classes.

(e) Notwithstanding anything in any Loan Document to the contrary, so long as no Event of Default has occurred and is continuing or shall occur as a result thereof, any Borrower Party may (i) purchase outstanding Term Loans on a non-pro rata basis through open market purchases or (ii) prepay the outstanding Term Loans (which Term Loans shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such purchase or prepayment), which in the case of clause (ii) only shall be prepaid without premium or penalty on the following basis:

(A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the "**Discounted Term Loan Prepayment**"), in each case made in accordance with this Section 2.05(1)(e) and without premium or penalty.

(B)

(1) any Borrower Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the "**Specified Discount Prepayment Amount**") with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the "**Specified Discount**") of such Term Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment Amounts may be offered with respect to different

Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Specified Discount Prepayment Response Date**").

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a "**Discount Prepayment Accepting Lender**"), the amount and the Classes of such Lender's Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2) above*; provided* that if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the "**Specified Discount Proration**"). The Auction

Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C)

(1) Subject to the proviso to subsection (A) above, any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range

Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Borrower Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the "**Applicable Discount**") which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a "**Participating Lender**").

(3) If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender's Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the "**Identified Participating Lenders**") shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the "**Discount Range Proration**"). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D)

(1) Subject to the proviso to subsection (A) above, any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); *provided* that (I) any such solicitation shall be extended, at the sole discretion

of such Borrower Party, to (x) each Term Lender or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Term Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Term Lenders (the "**Solicited Discounted Prepayment Response Date**"). Each Term Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the "**Offered Discount**") at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the "**Offered Amount**") such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Borrower Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the "**Acceptable Discount**"), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of

receipt by such Borrower Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the "**Acceptance Date**"), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the "**Discounted Prepayment Determination Date**"), the Auction Agent will determine (in consultation with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the "**Acceptable Prepayment Amount**") to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(D). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a "**Qualifying Lender**"). The applicable Borrower Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender's Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the "**Identified Qualifying Lenders**") shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in

consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the "**Solicited Discount Proration**"). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(F) If any Term Loan is prepaid in accordance with subsections (B) through (D) above, a Borrower Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 1:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) and Lenders as specified by the applicable Borrower Party in the applicable offer. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans

of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e). The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(1)(e), the relevant Borrower Party shall make a representation to the assigning or assignee Term Lenders, as applicable, that it does not possess material non-public information with respect to the Borrower and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders that have elected not to receive such information) or shall make a statement that such representation cannot be made.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(I) Each of the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.

(J) Each Borrower Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any

time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(K) The Administrative Agent (i) shall not be required to serve as the Auction Agent or have any other obligations to participate in (other than mechanical administrative duties), or facilitate any Discounted Term Loan Prepayment unless it is reasonably satisfied with the terms and restrictions thereof and (ii) shall not have any obligation to participate in, arrange, sell or otherwise facilitate, and will have no liability in connection with, any open market repurchases by Holdings, the Borrower or any of its Restricted Subsidiaries.

(2) Mandatory.

(a) Within five (5) Business Days after the Compliance Certificate has been delivered pursuant to Section 6.02(1), commencing with delivery of financial statements for the fiscal year ended on or about January 31, 2023 and for each fiscal year thereafter, the Borrower shall, subject to clause (g) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 50% (such percentage as it may be reduced as described below, the "**ECF Percentage**") of Excess Cash Flow for the fiscal year covered by such financial statements (if Excess Cash Flow for such fiscal year is not less than $10.0 million) (such payment, the "**ECF Payment**") *minus*:

(i) the sum of all voluntary prepayments of Term Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) (in an amount, in the case of prepayments pursuant to Section 2.05(1)(e), equal to the face amount of debt prepaid in respect of the principal amount of such Term Loans and only to the extent that such Loans have been cancelled) (including prepayments made after the end of the fiscal year covered by the relevant financial statements but prior to the making of such ECF Payment (such payments, the "**After Year-End Payment**")) (*provided* that, (x) for the avoidance of doubt, any such voluntary prepayments that have not been applied to reduce the payments which may be due from time to time pursuant to this Section 2.05(2)(a) shall be carried over to subsequent periods and may reduce the ECF Payment during such subsequent periods until such time as such voluntary prepayments reduce such payments which may be due from time to time, which such amount to be applied as set forth in Section 2.05(2)(g) below) and (y) in the event that in any fiscal period the applicable prepayment required pursuant to this Section 2.05(2)(a) is less than zero (such negative amount being, "**Negative Excess Cash Flow Amount**") (such Negative Excess Cash Flow Amount shall be applied to reduce the required excess cash flow prepayment required pursuant to this Section 2.05(2)(a) for the subsequent fiscal year),

(ii) the sum of all voluntary prepayments of Credit Agreement Refinancing Indebtedness, Permitted Incremental Equivalent Debt, Permitted Ratio Debt or Acquisition Debt, in each case to the extent secured in whole or in part on a *pari passu* basis with the Closing Date Term Loans (including, to the extent prepaid pursuant to an After Year-End Payment) (*provided* that, for the avoidance of doubt, any such voluntary prepayments that have not been applied to reduce the payments which may be due from time to time pursuant to this Section 2.05(2)(a) shall be carried over to subsequent periods and may reduce the ECF Payment during such subsequent periods until such time as such voluntary prepayments reduce such payments which may be due from time to time, which such amount to be applied as set forth in Section 2.05(2)(g) below),

(iii) [reserved]

(iv) the sum of all voluntary prepayments of Indebtedness in respect of the ABL Facility (including any Refinancing Indebtedness in respect thereof) or any Indebtedness under any other revolving facility that is secured, in whole or in part, on a *pari passu* basis with ABL Facility or the Closing Date Term Loans (in each case of this clause (iv), to the extent accompanied by a permanent reduction in the corresponding ABL Commitments or other revolving commitments) (in each case, including to the extent prepaid pursuant to an After Year-End Payment), in the case of each of the immediately preceding clauses (i), (ii) and (iii) and the succeeding clause (v), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or in connection with an After Year-End Payment, and in each case to the extent such prepayments are not funded with the proceeds of Funded Debt (other than borrowings under the ABL Facility or other revolving loans) or any Specified Equity Contributions (*provided* that, for the avoidance of doubt, any such voluntary prepayments that have not been applied to reduce the payments which may be due from time to time pursuant to this Section 2.05(2)(a) shall be carried over to subsequent periods and may reduce the ECF Payment during such subsequent periods until such time as such voluntary prepayments reduce such payments which may be due from time to time, which such amount to be applied as set forth in Section 2.05(2)(g) below);

provided that the ECF Percentage for any fiscal year shall be (x) 25% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.75 to 1.00 and greater than 1.50 to 1.00 and (y) 0% if the First Lien Net Leverage Ratio as of the end of such fiscal year was less than or equal to 1.50 to 1.00 (and it being understood that following the making of any After Year-End Payment, (i) the First Lien Net Leverage Ratio shall be recalculated giving *pro forma effect* to such After Year-End Payment as if such payment were made during the fiscal year of the applicable ECF Payment and the ECF Percentage for purposes of making such ECF Payment shall be determined by reference to the First Lien Net Leverage Ratio after giving effect to such recalculation and (ii) if such After Year-End Payment is taken into account for such calculation, the After Year-End Payment shall not be applied to the calculation of the First Lien Net Leverage Ratio for purposes of determining the ECF Percentage for any subsequent ECF Payment);

provided further that:

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such Excess Cash Flow on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time);

(B) the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Excess Cash Flow shall be allocated to the Term Loans in accordance with the terms hereof, to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(a) shall be reduced accordingly; and

(C) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).

(b) (i) If (x) the Borrower or any Restricted Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Proceeds (other than ABL Priority Collateral), the Borrower shall prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (g) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds realized or received; *provided* that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice (which may be by email) to the Administrative Agent of its intent to reinvest in accordance with Section 2.05(2)(b)(ii); *provided further* that

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such Net Proceeds on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such discharge at such time);

(B) the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof, to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(b)(i) shall be reduced accordingly; and

(C) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof; *provided further* that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii).

(ii) With respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Restricted Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in the business of the Borrower and its Restricted Subsidiaries (including, Permitted Acquisitions (and similar Investments) and capital expenditures that have already occurred within such period) within (x) twelve (12) months following receipt of such Net Proceeds or (y) if the Borrower or any Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Proceeds within twelve (12) months following receipt thereof, within the later of (A) twelve (12) months following receipt thereof and (B) one hundred eighty (180) days of the date of such legally binding commitment; *provided* that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.05.

(c) [Reserved].

(d) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness (A) not expressly permitted to be incurred or issued pursuant to Section 7.02(b) or (B) that constitutes Credit Agreement Refinancing Indebtedness or Refinancing Loans, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(e) Except as otherwise set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment,

(i) each prepayment of Term Loans required by Sections 2.05(2)(a) through (b) shall be applied to each Class of Term Loans then outstanding on a *pro rata* basis or a less than *pro rata* basis (but not greater than *pro rata* basis) with any other Term Loans (in each case, other than pursuant to a refinancing);

(ii) with respect to each Class of Loans, each prepayment pursuant to clauses (a) through (b) of Section 2.05(2) shall be applied as the Borrower may direct and otherwise to remaining scheduled installments of principal thereof following the date of prepayment in direct order of maturity;

(iii) each prepayment of Term Loans required by Section 2.05(2)(d), (a) to the extent constituting Credit Agreement Refinancing Indebtedness shall be applied in the manner directed by the Borrower to the applicable Class of Loans being refinanced and (b) to the extent constituting Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.02(b) shall be applied in the manner directed by the Borrower; and

(iv) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment;

provided that with respect to the allocation of such prepayments under this clause (e) between a Class of existing Loans and a Class of Extended Loans, the Borrower may allocate such prepayments as the Borrower may specify, subject to the limitation that the Borrower may not allocate to such Extended Loans any such mandatory prepayment (other than in the case of a refinancing of Extended Loans) unless such prepayment under this clause (e) is accompanied by at least a *pro rata* prepayment, based upon the applicable remaining scheduled installments of principal due in respect thereof, of the Term Loans of the same Class, if any, from which such Extended Loans were converted or exchanged (or such Term Loans of the existing Loan Class have otherwise been repaid in full).

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) at least three (3) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a

reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment or other applicable share provided for under this Agreement. Each Term Lender may reject all or a portion of its Pro Rata Share, or other applicable share provided for under this Agreement, of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a) and (b) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, two (2) Business Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds remaining shall be retained by the Borrower (or the applicable Restricted Subsidiary) and may be applied by the Borrower or such Restricted Subsidiary in any manner not prohibited by this Agreement.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a "**Foreign Asset Sale**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**"), or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions available under the applicable local law for a period of one year from the date of the event or calculation giving rise to such repatriation to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all or the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary.

(i) Interest, Funding Losses, etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurodollar Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurodollar Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that:

(a) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction, and

(b) any such partial reduction shall be in an aggregate amount of $5.0 million or any whole multiple of $1.0 million in excess thereof or, if less, the entire amount thereof.

(2) Mandatory. The Closing Date Term Commitment of each Term Lender on the Closing Date shall be automatically and permanently reduced to $0 upon the making of such Lender's Closing Date Term Loans to the Borrower pursuant to Section 2.01(1).

(3) Application of Commitment Reductions. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07).

Section 2.07 Repayment of Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (a) on the last Business Day of each fiscal quarter, commencing with the last Business Day of the second full fiscal quarter following the Closing Date, an aggregate principal amount equal to 1.25% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (b) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date. In connection with any Incremental Term Loans that constitute part of the same Class as the Closing Date Term Loans, the Borrower and the Administrative Agent shall be permitted to adjust the rate of prepayment in respect of such Class such that the Term Lenders holding Closing Date Term Loans comprising part of such Class continue to receive a payment that is not less than the same dollar amount that such Term Lenders would have received absent the incurrence of such Incremental Term Loans.

Section 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Eurodollar Rate for such Interest Period, respectively, *plus* the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of an Event of Default pursuant to Section 8.01(1) or 8.01(6) (solely with respect to Holdings and the Borrower), the Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

Section 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(1) The Term Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Term Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Term Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) [Reserved].

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(1), and by each Lender in its account or accounts pursuant to Section 2.11(1), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(1) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Term Borrowing set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

(e) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

(g) Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders, the amount due.

With Respect to any payment that the Administrative Agent makes for the account of the Lenders as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "**Rescindable Amount**"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (g) shall be conclusive, absent manifest error.

Section 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein (including with respect to any discounted prepayment of Term Loans pursuant to Section 2.05(2)(e) or 2.05(2)(g)), if any Lender of any Class shall obtain payment in respect of any principal of or interest on account of the Loans of such Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender), (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder or (iii) pursuant to another transaction that is otherwise permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 Incremental Term Facilities.

(1) Incremental Term Loan Request. The Borrower or any Guarantor may at any time and from time to time, on one or more occasions, after the Closing Date, by notice to the Administrative Agent increase the aggregate principal amount of any outstanding Class of Term Loans (a "**Term Loan Increase**") or add one or more additional Classes of term loans (including delayed draw term loan facilities) under the Loan Documents (each an "**Incremental Term Facility**" and the term loans made thereunder, the "**Incremental Term Loans**").

(2) Ranking. (a) Incremental Term Facilities will be secured only by Liens over the Collateral that rank on a *pari passu* basis with the Closing Date Term Loans and only Guarantors shall provide guarantees of Incremental Term Facilities and (b) Permitted Incremental Equivalent Debt will either be secured by Liens that rank on a pari passu or junior basis with or to the Liens securing the Obligations or be unsecured; *provided* that any Liens that rank on a pari passu basis or junior basis to the Liens securing the Closing Date Term Loans will be subject to the Applicable Intercreditor Agreement.

(3) Size. The aggregate principal amount of Incremental Term Facilities incurred on any date will not exceed an amount equal to the Permitted Incremental Amount. Unless the Borrower elects otherwise, each Incremental Term Facility shall be deemed incurred first under the Ratio Amount to the extent permitted, with the balance incurred under the Fixed Incremental Amount. Each Incremental Term Facility will be in an integral multiple of $1.0 million and in an aggregate principal amount that is not less than $10.0 million (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the limit set forth above.

(4) Incremental Lenders. Incremental Term Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of any Incremental Term Loan, nor will the Borrower have any obligation to approach any existing Lender(s) to provide any Incremental Term Loan) or by any Additional Lender on terms permitted by this Section 2.14. While existing Lenders may (but are not obligated, unless invited and so elect, to) participate in any syndication of an Incremental Term Facility and may (but are not obligated, unless invited and so elect, to) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication, and will not have any right of first refusal or other right to provide all or any portion, of any Incremental Term Facility or Incremental Term Loan except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of Incremental Term Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, on the terms permitted by this Section 2.14.

(5) Incremental Term Facility Amendments; Use of Proceeds. Each Incremental Term Facility will become effective pursuant to an amendment (each, an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Person providing such Incremental Term Facility and the Administrative Agent (*provided* that, if such Incremental Amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such Incremental Amendment), and the Administrative Agent hereby agrees to acknowledge any such Incremental Amendment that otherwise satisfies the requirements of this Section 2.14 as promptly as possible, however, to the extent the final form of such Incremental Amendment has been delivered to the Administrative Agent at least 1 Business Day prior to the proposed effectiveness thereof, the Administrative Agent shall acknowledge such Incremental Amendment immediately (*provided* that the failure to acknowledge such Incremental Amendment within such 1 Business Day period shall be deemed to be an acknowledgment). The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment following receipt

thereof from the Borrower. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. An Incremental Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Incremental Amendment) and (c) make other amendments to the terms of any existing Term Loans, in the case of each clause (a), (b) and (c), so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are not adverse to the existing Term Loan Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Term Facility and the Incremental Term Loans evidenced thereby. The Borrower may use the proceeds of the Incremental Term Loans for any purpose not prohibited by this Agreement.

(6) Conditions. The availability of Incremental Term Facilities under this Agreement will be subject solely to no Event of Default shall have occurred and be continuing; *provided* that in the case of a Limited Condition Transaction, at the Borrower's option, such Event of Default may be tested in accordance with Section 1.07(8) so long as at the time of the consummation of such Limited Condition Transaction no Event of Default under Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) shall have occurred and be continuing and no Event of Default shall have occurred and be continuing at the time of execution of a definitive acquisition agreement.

(7) Terms. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Term Facility. The terms of each Incremental Term Facility will be as agreed between the Borrower and the Persons providing such Incremental Term Loans; *provided* that:

(a) the final maturity date of such Incremental Term Loans (other than a Qualifying Bridge Facility) will be no earlier than the Latest Maturity Date of the Closing Date Term Loans;

(b) the Weighted Average Life to Maturity of such Incremental Term Loans (other than constituting a Qualifying Bridge Facility) will be no shorter than the longest remaining Weighted Average Life to Maturity of the Closing Date Term Loans;

(c) such Incremental Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory repayments or prepayments of the Term Loans (in each case, other than pursuant to a refinancing or with respect to greater than *pro rata* payments to an earlier maturing tranche) and may participate on a *pro rata* basis, greater than *pro rata* basis or less than *pro rata* basis in any voluntary prepayments of the Term Loans; and

(d) except as otherwise set forth herein, all other terms of any (i) Term Loan Increase will be on terms and pursuant to documentation applicable to the Class of Term Loans, being increased by such Term Loan Increase and (ii) any Incremental Term Facility shall be on terms and pursuant to documentation to be determined; *provided* that to the extent such terms and documentation are not consistent with the Closing Date Term Loans (except to the extent permitted by clause (8) below), they shall not be materially more favorable to the lenders providing such Incremental Term Facility, when taken as a whole, than the terms of the Closing Date Term Loans (except for covenants or other provisions (1) applicable only to the periods after the Latest Maturity Date of the Closing Date Term Loans or any Incremental Term Facility in effect at such time, (2) to the extent that such covenant or other provision is also added for the benefit of the Closing Date Term Loans or any Incremental Term Facility in effect at such time, (3) that are consistent with market terms and conditions at the time of incurrence or effectiveness (as determined by the Borrower in good faith) or (4) otherwise reasonably satisfactory to the Administrative Agent).

(8) Pricing. The interest rate, fees, original issue discount, rate floors and fees and maturity and amortization schedule for any Incremental Term Facilities will be as determined by the Borrower and the Persons providing such Incremental Term Facilities; *provided* that for the period commencing on the Closing Date and ending on the eighteen (18) month anniversary thereafter, in the event that the All-In Yield applicable to any Incremental Term Loans which are (A) *pari passu* with the Closing Date Term Loans in right of payment and with respect to security and (B) consist of term B loans denominated in Dollars (such Incremental Term Loans, "**Qualifying Term Loans**"), exceeds the All-In Yield of any Closing Date Term Loans by more than 50 basis points, then the interest rate margins for such Closing Date Term Loans shall be increased to the extent necessary so that the All-In Yield of such Closing Date Term Loans is equal to the All-In Yield of such Incremental Term Loans *minus* 50 basis points; *provided further* that if the Incremental Term Loans include an interest rate floor greater than the applicable interest rate floor under the Closing Date Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin for purpose of determining whether an increase to the interest rate margin under the Closing Date Term Loans shall be required, but only to the extent an increase in the interest rate floor in the Closing Date Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the Closing date Term Loans shall be increased to the extent of such differential between interest rate floors. The foregoing being referred to as the "**MFN Protection Provisions**".

(9) [Reserved].

(10) The Administrative Agent and the Lenders hereby agree that the minimum borrowing, *pro rata* borrowing and *pro rata* payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

Section 2.15 Refinancing Amendments.

(1) Refinancing Loans. At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Refinancing Loans or Refinancing Commitments in each case pursuant to a Refinancing Amendment.

(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such conditions precedent as may be requested by the providers of the applicable Refinancing Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Refinancing Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the reasonable opinion of the Borrower and the providers of the applicable Refinancing Loans, to effect the provisions of this Section 2.15 and to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans). A Refinancing Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Refinancing Amendment) and (c) make other amendments to the terms of any existing Term Loans, in the case of each clause (a), (b) and (c), so that such Refinancing Term Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments (x) are not adverse to the applicable existing Term Loan Lenders (as determined in good faith by the Borrower) or (y) are consistent with market terms and conditions at the time of incurrence or effectiveness (as determined by the Borrower in good faith). Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Refinancing Loans.

(3) Required Consents. Any Refinancing Amendment may, without the consent of any Person, other than the Borrower, the Persons providing the applicable Refinancing Loans and the Administrative Agent (*provided* that, if such Refinancing Amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such Refinancing Amendment), effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, and the Administrative Agent hereby agrees to acknowledge any such Refinancing Amendment that otherwise satisfies the requirements of this Section 2.15 as promptly as possible, however, to the extent the final form of such Refinancing Amendment has been delivered to the Administrative Agent at least 1 Business Day prior to the proposed effectiveness thereof, the Administrative Agent shall acknowledge such Refinancing Amendment immediately (*provided* that the failure to acknowledge such Refinancing Amendment within such 1 Business Day period shall be deemed to be an acknowledgment). This Section 2.15 supersedes any provision in this Agreement to the contrary (including Section 10.01).

(4) Providers of Refinancing Loans. Refinancing Loans may be provided by any existing Lender (it being understood that no exiting Lender shall have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender on terms permitted by this Section 2.15. For the avoidance of doubt, any Affiliated Lender that provides any Refinancing Term Loans will be subject to the limitations on Affiliated Lenders set forth in Section 10.07(h) (including the Affiliated Lender Cap).

Section 2.16 Extensions of Loans.

(1) Extension Offers. Pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and otherwise modify the terms of such Loans or Commitments pursuant to the terms set forth in an Extension Offer (each, an "**Extension**," and each group of Loans or Commitments so extended, as well as any Loans of the same Class not so extended, each being a "**tranche**" for purposes of this Section 2.16). Each Extension Offer will (i) specify the minimum amount of Loans or Commitments with respect to which an Extension Offer may be accepted, which will be an integral multiple of $1.0 million and an aggregate principal amount that is not less than $10.0 million, or if less, (a) the aggregate principal amount of such Loans outstanding or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed and (ii) set forth the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as the Administrative Agent shall agree in its sole discretion)). Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans or Commitments offered to be extended pursuant to such Extension Offer, then the Loans or Commitments of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any "most favored nation" pricing provisions, any condition on the non-existence of any Default or Event of Default or any financial ratio tests. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness, including a condition that a minimum amount of Loans or Commitments of any or all applicable tranches be tendered.

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (each, an "**Extension Amendment**") as may be necessary or appropriate in order to effect the provisions of this Section 2.16, establish new tranches in respect of Extended Loans and Extended Commitments and such amendments as permitted by clause (5) below as may be necessary or appropriate in the reasonable opinion of the Borrower in connection with the establishment of such Extended Loans and Extended Commitments. An Extension Amendment may (a) extend or add "call protection" to any existing Class of Term Loans, including amendments to Section 2.18, (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans,

including amendments to Section 2.07(1) (*provided* that any such amendment shall not decrease the dollar amount of any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Extension Amendment) and (c) make other amendments to the terms of any existing Term Loans, in the case of each clause (a), (b) and (c), so that such Extended Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided* that such amendments are (x) not adverse to the existing Term Loan Lenders (as determined in good faith by the Borrower) or (y) consistent with market terms and conditions at the time of incurrence or effectiveness (as determined by the Borrower in good faith). This Section 2.16 supersedes any provision(s) in Section 2.13 or 10.01 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement. Any Lender of an existing Class of Term Loans that elects not to participate in Extended Loans or Extended Commitments of such Class of Term Loans shall be referred to herein as a "**Non-Extended Lender**".

(3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Loans and Extended Commitments will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:

(a) the final maturity date of such Extended Loans and Extended Commitments will be no earlier than the Latest Maturity Date applicable to the Loans or Commitments subject to such Extension Offer;

(b) the Weighted Average Life to Maturity of any Extended Loans that are Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;

(c) any Extended Loans that are Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments of the Term Loans (in each case, other than pursuant to a refinancing) and may participate on a pro rata basis, greater than pro rata basis or less than pro rata basis in any voluntary prepayments of the Term Loans;

(d) such Extended Loans and Extended Commitments are not secured by any assets or property that does not constitute Collateral and may not be secured on a senior basis to the existing Term Loans;

(e) such Extended Loans and Extended Commitments are not guaranteed by any Subsidiary of the Borrower other than a Subsidiary that is a Loan Party; and

(f) the covenants and events of default applicable to Extended Loans or Extended Commitments are either (i) substantially identical to, or, taken as a whole, no more favorable to the Lenders providing such Extended Loans or Extended Commitments than, those applicable to the Loans subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment or (ii) otherwise on customary market terms, as determined in good faith by a Responsible Officer of the Borrower in its reasonable judgment; *provided* that this clause (f) will not apply:

(A) if an Extension Offer is made with respect to all the Loans or Commitments of a particular Class and all such Loans or Commitments are accepted in such Extension Offer and amended pursuant to the applicable Extension Amendment or

(B) to any of the following:

(1) terms addressed in the preceding clauses (a) through (e),

(2) interest rate, fees, funding discounts and other pricing terms,

(3) redemption, prepayment or other premiums,

(4) optional redemption or prepayment terms and

(5) covenants and events of default applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Any Extended Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Borrower, the applicable Extending Lender and the Administrative Agent (*provided* that, if such Extension does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such Extension), and the Administrative Agent hereby agrees to acknowledge any such Extension that otherwise satisfies the requirements of this Section 2.16 as promptly as possible, however, to the extent the final form of such Extension has been delivered to the Administrative Agent at least 1 Business Day prior to the proposed effectiveness thereof, the Administrative Agent shall acknowledge such Extension immediately (*provided* that the failure to acknowledge such Extension within such 1 Business Day period shall be deemed to be an acknowledgment). The transactions contemplated by this Section 2.16 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.16 will not apply to any of the transactions effected pursuant to this Section 2.16.

Section 2.17 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such payment is a payment of the principal amount of any Loans s in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(2) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18 Loan Repricing Protection.

All voluntary prepayments or repayments of all or any portion of the Term Loans, any Repricing Transaction, any mandatory prepayments of Term Loans pursuant to Section 2.05(2)(d), and any repayment of Term Loans following exercise of remedies pursuant to Section 8.02(2) as result of an Event of Default under Section 8.01(11), in any such case prior to the second anniversary of the Closing Date, shall be accompanied by a prepayment premium equal to:

(1) for the period on or prior to the first anniversary of the Closing Date, 2.00% of the principal amount of Term Loans so repriced, prepaid or repaid;

(2) for the period on or prior to the second anniversary of the Closing Date but after the first anniversary of the Closing Date, 1.00% of the principal amount of Term Loans so repriced, prepaid or repaid; and

(3) thereafter, 0.00%

Section 2.19 Permitted Debt Exchanges.

(1) Notwithstanding anything to the contrary contained in this Agreement, pursuant to one or more offers (each, a "**Permitted Debt Exchange Offer**") made from time to time by the Borrower to all Lenders (other than, with respect to any Permitted Debt Exchange Offer that constitutes an offering of securities, any Lender that, if requested by the Borrower, is unable to certify that it is (i) a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act), (ii) an institutional "accredited investor" (as defined in Rule 501 under the Securities Act) or (iii) not a "U.S. person" (as defined in Rule 902 under the Securities Act)) with outstanding Term Loans of a particular Class, the Borrower may from time to time consummate one or more exchanges of such Term Loans for Indebtedness (in the form of senior secured, senior unsecured, senior subordinated, or subordinated notes or loans) (such Indebtedness, "**Permitted Debt Exchange Notes**" and each such exchange, a "**Permitted Debt Exchange**"), so long as the following conditions are satisfied:

(i) each such Permitted Debt Exchange Offer shall be made on a pro rata basis to the Lenders (other than, with respect to any Permitted Debt Exchange Offer that constitutes an offering of securities, any Lender that, if requested by the Borrower, is unable to certify that it is (i) a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act), (ii) an institutional "accredited investor" (as defined in Rule 501 under the Securities Act) or (iii) not a "U.S. person" (as defined in Rule 902 under the Securities Act)) of each applicable Class based on their respective aggregate principal amounts of outstanding Term Loans under each such Class;

(ii) the aggregate principal amount (calculated on the face amount thereof) of such Permitted Debt Exchange Notes shall not exceed the aggregate principal amount (calculated on the face amount thereof) of Term Loans so refinanced, except to the extent a different incurrence basket pursuant to Section 7.02 is utilized and with respect to an amount equal to any fees, expenses, commissions, underwriting discounts and premiums payable in connection with such Permitted Debt Exchange;

(iii) the stated final maturity of such Permitted Debt Exchange Notes is not earlier than the latest Maturity Date for the Class or Classes of Term Loans being exchanged, and such stated final maturity is not subject to any conditions that could result in such stated final maturity occurring on a date that precedes such latest maturity date (it being understood that acceleration or mandatory repayment, prepayment, redemption or repurchase of such Permitted Debt Exchange Notes upon the occurrence of an event of default, a change in control, an event of loss or an asset disposition shall not be deemed to constitute a change in the stated final maturity thereof);

(iv) such Permitted Debt Exchange Notes are not required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon the occurrence of an event of default, a change in control, an event of loss or an asset disposition) prior to the latest Maturity Date for the Class or Classes of Term Loans being exchanged; *provided* that, notwithstanding the foregoing, scheduled amortization payments (however denominated, including scheduled offers to repurchase) of such Permitted Debt Exchange Notes shall be permitted so long as the Weighted Average Life to Maturity of such Indebtedness shall be longer than the remaining Weighted Average Life to Maturity of the Class or Classes of Term Loans being exchanged;

(v) no Restricted Subsidiary is a borrower or guarantor with respect to such Indebtedness unless such Restricted Subsidiary is or substantially concurrently becomes a Loan Party;

(vi) if such Permitted Debt Exchange Notes are secured, such Permitted Debt Exchange Notes are secured on a pari passu basis or junior priority basis to the Obligations and (A) such Permitted Debt Exchange Notes are not secured by any assets not securing the Obligations unless such assets substantially concurrently secure the Obligations and (B) the beneficiaries thereof (or an agent on their behalf) shall become party to the Applicable Intercreditor Agreement;

(vii) the terms and conditions of such Permitted Debt Exchange Notes (excluding pricing and optional prepayment or redemption terms or covenants or other provisions applicable only to periods after the Maturity Date of the Class or Classes of Term Loans being exchanged) reflect market terms and conditions at the time of incurrence or issuance; *provided* that if such Permitted Debt Exchange Notes contain any financial maintenance covenants, such covenants shall not be more restrictive than (or in addition to) those contained in this Agreement (unless such covenants are also added for the benefit of the Lenders under this Agreement, in which case any requirement to so comply shall not require the consent of any Lender or Agent hereunder);

(viii) all Term Loans exchanged under each applicable Class by the Borrower pursuant to any Permitted Debt Exchange shall automatically be cancelled and retired by the Borrower on date of the settlement thereof (and, if requested by the Administrative Agent, any applicable exchanging Lender shall execute and deliver to the Administrative Agent an Assignment and Assumption, or such other form as may be reasonably requested by the Administrative Agent, in respect thereof pursuant to which the respective Lender assigns its interest in the Term Loans being exchanged pursuant to the Permitted Debt Exchange to the Borrower for immediate cancellation), and accrued and unpaid interest on such Term Loans shall be paid to the exchanging Lenders on the date of consummation of such Permitted Debt Exchange or, if agreed to by the Borrower and the Administrative Agent, the next scheduled Interest Payment Date with respect to such Term Loans (with such interest accruing until the date of consummation of such Permitted Debt Exchange);

(ix) if the aggregate principal amount of all Term Loans (calculated on the face amount thereof) of a given Class tendered by Lenders in respect of the relevant Permitted Debt Exchange Offer (with no Lender being permitted to tender a principal amount of Term Loans which exceeds the principal amount thereof of the applicable Class actually held by it) shall exceed the maximum aggregate principal amount of Term Loans of such Class offered to be exchanged by the Borrower pursuant to such Permitted Debt Exchange Offer, then the Borrower shall exchange Term Loans under the relevant Class tendered by such Lenders ratably up to such maximum based on the respective principal amounts so tendered, or, if such Permitted Debt Exchange Offer shall have been made with respect to multiple Classes without specifying a maximum aggregate principal amount offered to be exchanged for each Class, and the aggregate principal amount of all Term Loans (calculated on the face amount thereof) of all Classes tendered by Lenders in respect of the relevant Permitted Debt Exchange Offer (with no Lender being permitted to tender a principal amount of Term Loans which exceeds the principal amount thereof actually held by it) shall exceed the maximum aggregate principal amount of Term Loans of all relevant Classes offered to be exchanged by the Borrower pursuant to such Permitted Debt Exchange Offer, then the Borrower shall exchange Term Loans across all Classes subject to such Permitted Debt Exchange Offer tendered by such Lenders ratably up to such maximum amount based on the respective principal amounts so tendered;

(x) all documentation in respect of such Permitted Debt Exchange shall be consistent with the foregoing, and all written communications generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and made in consultation with the Borrower and the Administrative Agent; and

(xi) any applicable Minimum Tender Condition or Maximum Tender Condition, as the case may be, shall be satisfied or waived by the Borrower.

Notwithstanding anything to the contrary herein, no Lender shall have any obligation to agree to have any of its Loans or Term Commitments exchanged pursuant to any Permitted Debt Exchange Offer.

(2) With respect to all Permitted Debt Exchanges effected by the Borrower pursuant to this Section 2.19, such Permitted Debt Exchange Offer shall be made for not less than $10.0 million in aggregate principal amount of Term Loans; *provided* that subject to the foregoing the Borrower may at its election specify (A) as a condition (a "**Minimum Tender Condition**") to consummating any such Permitted Debt Exchange that a minimum amount (to be determined and specified in the relevant Permitted Debt Exchange Offer in the Borrower's discretion) of Term Loans of any or all applicable Classes be tendered and/or (B) as a condition (a "**Maximum Tender Condition**") to consummating any such Permitted Debt Exchange that no more than a maximum amount (to be determined and specified in the relevant Permitted Debt Exchange Offer in the Borrower's discretion) of Term Loans of any or all applicable Classes will be accepted for exchange. The Administrative Agent and the Lenders hereby acknowledge and agree that the provisions of Sections 2.05, 2.06, and 2.13 do not apply to the Permitted Debt Exchange and the other transactions contemplated by this Section 2.19 and hereby agree not to assert any Default or Event of Default in connection with the implementation of any such Permitted Debt Exchange or any other transaction contemplated by this Section 2.19.

(3) In connection with each Permitted Debt Exchange, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and the Borrower and the Administrative Agent, acting reasonably, shall mutually agree to such procedures as may be necessary or advisable to accomplish the purposes of this Section 2.19; *provided* that the terms of any Permitted Debt Exchange Offer shall provide that the date by which the relevant Lenders are required to indicate their election to participate in such Permitted Debt Exchange shall be not less than five (5) Business Days following the date on which the Permitted Debt Exchange Offer is made. The Borrower shall provide the final results of such Permitted Debt Exchange to the Administrative Agent no later than three (3) Business Days prior to the proposed date of effectiveness for such Permitted Debt Exchange (or such shorter period agreed to by the Administrative Agent in its sole discretion) and the Administrative Agent shall be entitled to conclusively rely on such results.

(4) The Borrower shall be responsible for compliance with, and hereby agrees to comply with, all applicable securities and other laws in connection with each Permitted Debt Exchange, it being understood and agreed that (i) neither the Administrative Agent nor any Lender assumes any responsibility in connection with the Borrower's compliance with such laws in connection with any Permitted Debt Exchange and (ii) each Lender shall be solely responsible for its compliance with any applicable "insider trading" laws and regulations to which such Lender may be subject under the Exchange Act.

Section 2.20 Replacement Loans. This Agreement may be amended with the written consent of the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Loans**") with replacement term loans ("**Replacement Loans**") hereunder; *provided* that:

(1) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, *plus* accrued interest, fees, premiums (if any) and penalties thereon and fees and expenses incurred in connection with such refinancing of Replaced Loans with such Replacement Loans,

(2) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing; and

(3) all other terms (other than with respect to pricing, premiums and optional prepayment or redemption terms) applicable to such Replacement Loans shall be substantially identical to, or no more favorable taken as a whole (in each case as determined by the Borrower in its reasonable judgment) to the Lenders providing such Replacement Loans than, those applicable to such Replaced Loans, except to the extent (x) necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing or (y) consistent with market terms and conditions at the time of incurrence or effectiveness (as determined by the Borrower in good faith).

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(1) Except as required by applicable Law, any and all payments by any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law (as determined in the good faith discretion of such Loan Party or withholding agent) to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on behalf of any Loan Party to any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall be entitled to make such deduction or withholding and shall pay any amounts deducted or withheld to the relevant Governmental Authority for any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), the Lender or the Agent (as applicable) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay, the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. The Administrative Agent and each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its inability to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement two properly completed and duly signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H (any such certificate, a "**United States Tax Compliance Certificate**") and (B) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), executed originals of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, Form W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner), or

(v) two properly completed and duly signed copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding Tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 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. Solely for purposes of this paragraph, the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this clause (c), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(4) In addition to the payments by a Loan Party required by Section 3.01(2), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01), whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this paragraph (6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate) and (b) if such notice asserts the illegality of

such Lender determining or charging interest rates based upon the Eurodollar Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. Notwithstanding anything to the contrary herein or in any other Loan Document:

(1) On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12- month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is the Adjusted Eurodollar Rate, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(2)

(a) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided 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 (and any such objection shall be conclusive and binding absent manifest error).

(b) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace the Adjusted Eurodollar Rate for all purposes hereunder and under any Loan Document in respect of any setting of such

Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(3) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(4) In connection with the implementation and administration 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.

(5) The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03, 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, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03.

(6) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or the Adjusted Eurodollar Rate), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate Loan.

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender that is not otherwise accounted for in the definition of "Eurodollar Rate" or this clause (c);

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a Eurodollar Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Eurodollar Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the "floor" specified in the proviso to the definition of "Eurodollar Rate".

Section 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurodollar Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of Eurodollar Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Eurodollar Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Eurodollar Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make Eurodollar Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender or Non-Extended Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent:

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment); *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 and, in the case of a Repricing Transaction, any "prepayment premium" pursuant to Section 2.18 that would otherwise be owed in connection therewith) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Term Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Term Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans and Commitments, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws;

(vii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, and

(viii) in the case of any such assignment from a Lender becoming a Non-Consenting Lender in connection with a Refinancing Amendment, the applicable Eligible Assignee shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable Refinancing Amendment; or

(b) terminate the Commitment of such Lender and in the case of a Lender, repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date (including in the case of a Repricing Transaction, any "prepayment premium" pursuant to Section 2.18 that would otherwise be owed in connection therewith); *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender**."

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment, satisfaction or discharge of all other Obligations under this Agreement and resignation of the Administrative Agent.

ARTICLE IV

CONDITIONS PRECEDENT TO TERM BORROWINGS

Section 4.01 Conditions to Term Borrowings on Closing Date. The obligation of each Lender to make the Closing Date Term Loans on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent:

(1) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or copies in.pdf format (followed promptly by originals) unless otherwise reasonably agreed by the Administrative Agent) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(a) a Committed Loan Notice;

(b) executed counterparts of this Agreement and the Guaranty;

(c) each Collateral Document set forth on Schedule 4.01(1)(c) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with:

(i) certificates, if any, representing the Pledged Collateral referred to therein, and to the extent certificated, accompanied by undated stock or note powers executed in blank; and

(ii) evidence that all UCC-1 financing statements (or register of mortgages and charges, as applicable) in the jurisdiction of organization of each Loan Party that the Administrative Agent and the Collateral Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(d) (I) a copy of the certificate or articles of incorporation, including all amendments thereto, of each Loan Party, certified as of a recent date by the secretary of state of the state of organization of such Loan Party, and the other Organizational Documents of such Loan Party, (II) certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such

jurisdiction), (iii) customary certificates of resolutions or other action and (IV) incumbency certificates or other certificates of Responsible Officers of each Loan Party evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(e) a customary legal opinion from Kirkland & Ellis LLP, special counsel to the Loan Parties; and

(f) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I.

(2) The Arrangers shall have received (i) Audited Financial Statements and (ii) the Pro Forma Financial Statements.

(3) The Administrative Agent and the Arrangers shall have received at least two (2) Business Days prior to the Closing Date, (a) all documentation and other information in respect of the Loan Parties reasonably determined by the Administrative Agent or the Arrangers to be required by U.S. regulatory authorities required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested by the Administrative Agent or the Arrangers in writing by it at least ten (10) Business Days prior to the Closing Date and (b) a Beneficial Ownership Certification in relation to any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

(4) The Arrangers shall have received a certification by a Responsible Officer of the Borrower that the conditions set forth in clauses (5) and (6) of this Section 4.01 have been satisfied (which may be in the form of the Closing Date Committed Loan Notice).

(5) The representations and warranties contained in Article V hereof shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(6) There shall not have occurred any event since the date of the Audited Financial Statements that constitutes a Material Adverse Effect.

(7) All fees required to be paid on the Closing Date, including pursuant to the Engagement Letter, Agency Fee Letter and reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to the Engagement Letter, to the extent invoiced at least 3 Business Days prior to the Closing Date shall have been paid in full in cash substantially concurrently with the borrowing of the Closing Date Term Loans (which amounts may, at the option of the Borrower, be offset against the proceeds of the Closing Date Term Loans).

(8) The Administrative Agent shall have received the ABL Intercreditor Agreement acknowledged and delivered by the Borrower and the other Loan Parties thereto.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Each of Holdings (solely with respect to Sections 5.01, 5.02, 5.03, 5.10, 5.12 5.13 and 5.17) and the Borrower represents and warrants to the Administrative Agent and the Lenders, that at the time of each applicable Term Borrowing (solely to the extent required to be true and correct for such Term Borrowing pursuant to Article IV or Section 2.14, as applicable):

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries that is a Material Subsidiary:

(1) is a Person duly organized, registered or formed (as applicable), validly existing and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization (as applicable) (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of the jurisdiction of its incorporation, formation or organization or of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws, orders, writs, injunctions and orders, and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (1) (other than with respect to Holdings and Borrower) (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation in excess of the Threshold Amount to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(1)

(a) The Audited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The unaudited *pro forma* consolidated balance sheet and related unaudited *pro forma* consolidated statement of income of the Borrower and its consolidated Subsidiaries, as of and for the 12-month period ending on or about May 1, 2021, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of the statement of income) (collectively, the "**Pro Forma Financial Statements**"), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Borrower and its consolidated Subsidiaries as of or about May 1, 2021 and their estimated results of operations for the period covered thereby.

(2) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation. As of the Closing Date, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

Section 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, overtly threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

Section 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries has become subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; and (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or, to the knowledge of the Borrower, predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility in a manner that would give rise to any Environmental Liability.

Section 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), which are due and payable, except those Taxes which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2)

(a) No ERISA Event has occurred or is reasonably expected to occur;

(b) none of the Loan Parties or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan; and

(c) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA;

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable Laws and (b) none of Holdings, the Borrower or any Subsidiary of any of the foregoing has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

Section 5.12 Subsidiaries.

(1) As of the Closing Date and after giving effect to the Transactions, all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Restricted Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and the "Collateral Documents" (as defined in the ABL Credit Agreement) and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of each Subsidiary,

(b) the ownership interests of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership, and

(c) the Equity Interests of each Subsidiary described in clause (b) that are required to be pledged on the Closing Date after giving effect to the Transactions pursuant to the Collateral and Guarantee Requirement.

Section 5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is an "investment company" under the Investment Company Act of 1940.

Section 5.14 Disclosure. None of the material written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, when furnished, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

Section 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, service marks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, "**IP Rights**") that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 USA PATRIOT Act; Anti-Terrorism Laws; Foreign Corrupt Practices Act. To the extent applicable, Holdings, Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, (ii) the United States Foreign Corrupt Practices Act of 1977 (the "**FCPA**"), and (iii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto. None of Holdings, Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of any of Holdings, the Borrower or any of the Restricted Subsidiaries, is currently the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**") ("**Sanctions**"). None of Holdings, Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of any of Holdings, the Borrower or any of the Restricted Subsidiaries is: (a) located, organized, or ordinarily resident in a country or territory that is subject to a comprehensive trade embargo administered by OFAC (presently, Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine (collectively, "**Sanctioned Countries**")); (b) identified on OFAC's Specially Designated Nationals and Blocked Persons List ("**SDNs**"); (c) majority owned by one or more SDNs (collectively with SDNs, "**Sanctioned Persons**"); or (d) engaged, directly or knowingly indirectly, in dealings or transactions in or with Sanctioned Countries or Sanctioned Persons that are prohibited by Sanctions. No proceeds of the Loans will be used by Holdings, the Borrower or any Restricted Subsidiary (a) directly or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation of the FCPA or (b) for the purpose of financing activities of or with any Person, that, at the time of such financing, is the subject of any Sanctions administered by OFAC in violation of applicable Sanctions.

Section 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien (subject to Liens permitted by Section 7.01) with the priority set forth in the Applicable Intercreditor Agreement on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) any Excluded Assets.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans issued hereunder only in compliance with (and not in contravention of) each Loan Document.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as the Termination Conditions have not been satisfied, each of Holdings (solely with respect to Sections 6.04, 6.05 and 6.13) and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(1) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending on or about January 29, 2022 (*provided*, that upon and following the consummation of a Qualifying IPO, extensions granted by the SEC for such filings shall automatically extend the corresponding financial report deadline under this Section 6.01(1)), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of any independent registered public accounting firm of nationally recognized standing or another accounting firm, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) an upcoming maturity of any Indebtedness permitted hereunder, (ii) any anticipated or actual inability to satisfy any financial maintenance covenant or (iii) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary);

(2) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower commencing with the first fiscal quarter ending after the Closing Date (*provided*, that upon and following the consummation of a Qualifying IPO, extensions granted by the SEC for such filings shall automatically extend the corresponding financial report deadline under this Section 6.01(2)), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by an Officer's Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;

(3) within ninety (90) days after the end of each fiscal year of the Borrower, a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected operations or income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood by the Secured Parties that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and the Investors and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); *provided* that the obligations to deliver a budget under this paragraph shall cease to apply upon and following the consummation of a Qualifying IPO;

(4) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(5) quarterly, upon request of the Administrative Agent, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to Section 6.01(1) and Section 6.01(2) above (but no earlier than ten (10) Business Days after the delivery thereof), as applicable, commencing with the delivery of information with respect to the first fiscal quarter ending after the Closing Date, to participate in a conference call for Lenders to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered; *provided* that the obligations of this paragraph shall be satisfied by public investor or similar earnings release calls upon and following the consummation of a Qualifying IPO.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01; *provided*, that upon and following the consummation of a Qualifying IPO, extensions granted by the SEC for such filings shall automatically extend the corresponding financial report deadline under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of any independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (x) shall be prepared in accordance with generally accepted auditing standards and (y) shall not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) an upcoming maturity of any Indebtedness permitted hereunder, (ii) any anticipated or actual inability to satisfy any financial maintenance covenant or (iii) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain any purchase accounting adjustments for transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP, or the respective interpretation thereof, and that such restatements will not result in a Default or an Event of Default under the Loan Documents.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender:

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the first full fiscal quarter ending after the Closing Date), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of events of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the ABL Facility, so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Sections IA and IIB of the Perfection Certificate (or confirming that there has been no change in such information since the latter of the Closing Date or the last such report)and (b) a list of each Subsidiary of Holdings that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list; and

(5) promptly, such additional information regarding the financial affairs of any Loan Party or any Material Subsidiary that is a Restricted Subsidiary as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower, its Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities. the Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent and the Arrangers will treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

(1) any Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto; and

(2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or its Subsidiary, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clauses (1) or (2) of this Section 6.05 to the extent (other than with respect to the preservation of the existence of the Borrower set forth in clause (1)) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, provisional liquidation, liquidation, dissolution or disposition permitted by Article VII.

Section 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in reasonably good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than what is consistent with past practice. Each such policy of insurance will as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder; *provided* that to the extent that the requirements of this Section 6.07 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days of the Closing Date (or such later date as the Administrative Agent may agree).

Section 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property (including ERISA, the USA PATRIOT Act, Sanctions, OFAC and FCPA), except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower*; provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year absent the existence of an Event of Default and such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

Section 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party (including, without limitation, upon the formation of any Material Domestic Subsidiary that is a Division Successor), (ii) the designation of any existing direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Domestic Subsidiary or

(iv) an Excluded Subsidiary that is a Material Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Restricted Subsidiary of the Borrower, (y) upon the acquisition of any material assets by any Loan Party or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within sixty (60) days (or such greater number of days specified below) after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion, cause such Material Domestic Subsidiary required to become a Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and:

(A) within sixty (60) days after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent supplements to the Security Agreement, a counterpart signature page to the Intercompany Subordination Agreement, Intellectual Property Security Agreements, any Applicable Intercreditor Agreements and other security agreements and documents necessary to satisfy the Collateral and Guarantee Requirement, as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and a joinder to the Intercompany Subordination Agreement substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Domestic Subsidiary;

(C) within sixty (60) days after such formation, acquisition or designation, take and cause (i) the applicable Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Material Domestic Subsidiary, in each

case, to take customary action(s) (including the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days) after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request (with such opinion being consistent with the Opinion of Counsel delivered to the Administrative Agent on the Closing Date).

Section 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations thereunder) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

Section 6.13 Further Assurances and Post-Closing Covenant.

Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

The Borrower shall, and shall cause each of its Restricted Subsidiaries to, deliver each of the documents, instruments and agreements and take each of the actions set forth on Schedule 6.13 within the time periods set forth on such Schedule (or such later date as the Administrative Agent may reasonably agree to in writing).

Section 6.14 Use of Proceeds. The proceeds of the Closing Date Term Loans will be used (i) to consummate the Closing Date Refinancing on the Closing Date, (ii) to pay the Transaction Expenses, (iii) to fund the Closing Date Distribution and (iv) to the extent any such proceeds remain after the foregoing uses, for general corporate purposes not prohibited by the terms of this Agreement.

Section 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (1) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (2) a public rating (but not any specific rating) in respect of each Term Facility as of the Closing Date from each of S&P and Moody's.

Section 6.16 Accounting Changes. The Borrower shall, and shall cause its Restricted Subsidiaries to, maintain their fiscal year as in effect on the Closing Date; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.17 Nature of Business. The Borrower shall and shall cause its Restricted Subsidiaries to, engage in material line of business substantially the same as those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complimentary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

Section 6.18 Designation of Subsidiaries.

(a) Subject to Section 6.18(b) below, the Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) the designation of any Restricted Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's investment therein, (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time and (iii) the Indebtedness and Liens of such subsidiary at the time it is designated as a "restricted subsidiary" shall be treated as an Indebtedness and Liens of such Subsidiary at such time; and

(b) The Borrower shall not (I) (x) designate any Restricted Subsidiary as an Unrestricted Subsidiary or (y) designate an Unrestricted Subsidiary as a Restricted Subsidiary unless, in any such case (a) after giving *pro forma* effect thereto, the Total Net Leverage Ratio for the Test Period immediately preceding such designation would be no greater than 2.00 to 1.00 and (b) no Event of Default shall have occurred and be continuing or would result therefrom or (II) transfer any Material IP to an Unrestricted Subsidiary.

Section 6.19 Transactions with Affiliates.

(a) The Borrower shall, and shall permit any Restricted Subsidiaries, to make any payment to, or sell, Lease or transfer or otherwise dispose of any of its properties or assets to, or purchase property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $20.0 million, or involving the assignment, transfer or exclusive licensing of any intellectual property that is material to the business, taken as a whole, of any of Holdings, the Borrower or any Restricted Subsidiary (as determined by the Borrower in good faith), only if (A) such Affiliate Transaction does not involve the assignment, transfer or exclusive licensing of intellectual property to an Unrestricted Subsidiary, and is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view, and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $30.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(b) Notwithstanding the foregoing, the following shall be permitted:

(1) (a) transactions between or among the Borrower and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement and effected for a *bona fide* business purpose;

(2) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition) and (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder;

(3)

(a) so long as no Event of Default under Section 8.01(1) and Section 8.01(6) shall have occurred and be continuing or would result therefrom, the payment of management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreement (including any unpaid management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreement, or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Closing Date,

(b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and its officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors,

(c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice,

(d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company and

(e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary;

(5) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm's length basis;

(6) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date);

(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses and the payment of any Public Company Costs following the consummation of a Qualifying IPO;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) sales or contributions of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto and sales;

(12) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;

(14) (a) investments by Affiliates in securities of the Borrower (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities;

(15) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary or a Parent Company following the consummation of a Qualifying IPO in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(16) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries that constitute a Tax Group; *provided* that in each case the amount of such payments in any taxable year does not exceed the amount that the Borrower, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent of amount received from Unrestricted Subsidiaries) would be required to pay in respect of foreign, federal, state and local taxes for such taxable year were the Borrower, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such Parent Company;

(17) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(18) IP Rights licenses in the ordinary course of business or consistent with industry practice;

(19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to the equity holders agreement or the registration rights agreement entered into on or after the Closing Date;

(20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;

(22) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns, directly or indirectly, Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;

(23) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(25) investments by any Investor or Parent Company in securities of the Borrower;

(26) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) [reserved] or (c) other Indebtedness of the Borrower and its Subsidiaries held by Affiliates; *provided* that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith; and

(27) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 6.19 or any amendment thereto.

ARTICLE VII

NEGATIVE COVENANTS

So long as the Termination Conditions are not satisfied:

Section 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable or contingently (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; and

(b) the foregoing clause (a) shall not apply to the following:

(1) Indebtedness of the Borrower and of its Restricted Subsidiaries under the Loan Documents (including Incremental Term Loans, Refinancing Loans, Extended Loans and Replacement Loans);

(2) [reserved];

(3) the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2) and clause (25) below);

(4) (a) the incurrence of Attributable Indebtedness and (b) Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations), Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock or Preferred Stock incurred or issued and outstanding under this clause (4), without regard to any Indebtedness listed on Schedule 7.02(3), at such time not to exceed the greater of (A) $35.0 million and (B) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto and any Refinancing Indebtedness of the Indebtedness referred to in this clause (4) thereof;

(5) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(6) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(7) the incurrence of Indebtedness of the Borrower to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans to the extent permitted by applicable law and it does not result in adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent permitted by Section 7.05; *provided* that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor to the extent permitted by applicable law and it does not result in adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary issued to the Borrower or a Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other

subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(11) the incurrence of Indebtedness in respect of self-insurance and Indebtedness in respect of performance, bid, appeal and surety bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any Restricted Subsidiary or Indebtedness in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(12) the incurrence of:

(a) Indebtedness or Disqualified Stock of the Borrower and Indebtedness, Disqualified Stock or Preferred Stock of the Borrower or any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 100.0% of the net cash proceeds received by the Borrower and its Restricted Subsidiaries since the Closing Date from the issue or sale of Equity Interests of the Borrower, the Borrower and the Subsidiary Guarantors or contributions to the capital of the Borrower, the Borrower and the Subsidiary Guarantors, including through consolidation, amalgamation or merger (in each case, other than proceeds of Disqualified Stock, Specified Equity Contributions or sales of Equity Interests to the Borrower or any Subsidiary) to the extent such net cash proceeds or cash have not been applied to make Restricted Payments with the Available Amount or to make Permitted Investments under clause (9) of the definition of Permitted Investments; *provided* that any such Indebtedness shall not mature earlier than the Latest Maturity Date for the Closing Date Term Loans; and

(b) Indebtedness or Disqualified Stock of the Borrower and Indebtedness, Disqualified Stock or Preferred Stock of the Borrower or any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed the greater of (a) $90.0 million and (b) 50.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto *plus*, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness or Disqualified Stock, an amount equal to the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness or Disqualified Stock (this Section 7.02(b)(12)(b), the "**General Debt Basket**");

provided that any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued pursuant to this clause (12) will cease to be deemed incurred, issued or outstanding for purposes of this clause (12) but will be deemed incurred or issued as Permitted Ratio Debt from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred or issued such Indebtedness, Disqualified Stock or Preferred Stock as Permitted Ratio Debt without reliance on this clause (12) (it being understood and agreed that such reclassification shall be automatic if at the end of any fiscal quarter such reclassification would then be permitted);

(13) the incurrence by the Borrower of Indebtedness or Disqualified Stock or the incurrence by a Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock that serves to Refinance any Indebtedness permitted under clauses (3) and (12)(a) above, this clause (13) and clauses (14), (23), (29), (30) and (31), or any successive Refinancing Indebtedness with respect to any of the foregoing;

(14) the incurrence of:

(a) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, that is assumed by the Borrower or any Restricted Subsidiary in connection with a Permitted Acquisition or any other similar acquisition or investment (including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary), any Acquired

Indebtedness, and Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement (it being understood that with respect to assumed Indebtedness incurred under this clause (14), such Indebtedness is only the obligation of the Person and/or Person's Subsidiaries that are acquired or that acquire the relevant assets and such Indebtedness was not created in contemplation of such acquisition);

(b) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred in connection with or to finance a Permitted Acquisition or any other similar acquisition or Investment permitted hereunder in accordance with the terms of this Agreement, in an amount not to exceed the sum of (the Indebtedness being incurred pursuant to this clause (b) being, "**Acquisition Debt**"): such additional unlimited amounts, so long as (I) in the case of unsecured Indebtedness or Indebtedness secured by assets not constituting Collateral or Disqualified Stock of the Borrower or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary, the Total Net Leverage Ratio is not greater than 3.50 to 1.00, (II) in the case of Indebtedness secured by a Lien on the Collateral that is junior to the Liens securing the Obligations (or Disqualified Stock of the Borrower or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary secured on a junior basis to the Obligations to the extent permitted under the definition of Permitted Liens), the Senior Secured Leverage Ratio is not greater than 3.00 to 1.00 or (III) in the case of Indebtedness secured by a Lien on the Collateral secured on a pari passu basis with the Closing Date Term Loans (or Disqualified Stock of the Borrower or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary secured on a pari passu or senior basis to the Obligations to the extent permitted under the definition of Permitted Liens), the First Lien Net Leverage Ratio is not greater than 2.00 to 1.00, and in the case of each of the foregoing clauses (I), (II) and (III), determined as of the most recently ended Test Period and on a *pro forma* basis in accordance with Section 1.07 and including a *pro forma* application the net proceeds therefrom, without given effect to the incurrence of such Indebtedness and without netting the proceeds therefrom;

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by letters of credit or bank guarantees permitted hereunder, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary was permitted hereunder;

(18) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management and consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;

(22) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) the incurrence of Indebtedness or Disqualified Stock by Restricted Subsidiaries of the Borrower that are not Guarantors in an amount not to exceed and together with any other Indebtedness and Disqualified Stock incurred and outstanding under this clause (23) and any outstanding Indebtedness or Disqualified Stock under clause (13) to Refinance Indebtedness initially incurred in reliance on this clause (23) (excluding any Incremental Amounts) the greater of (a) $40.0 million and (b) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated after giving *pro forma* effect thereto; it being understood that any Indebtedness or Disqualified Stock deemed incurred or issued pursuant to this clause (23) will cease to be deemed incurred or issued or outstanding for the purpose of this clause (23) but will be deemed incurred or issued under clause (d)(y) of the definition of Permitted Ratio Debt from and after the first date on which the Borrower or such Restricted Subsidiaries could have incurred such Indebtedness under clause (d)(y) of the definition of Permitted Ratio Debt without reliance on this clause (23);

(24) the incurrence of Indebtedness by the Borrower or any Restricted Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) Indebtedness incurred pursuant to the ABL Facility in an aggregate principal amount not to exceed the greater of (1) the sum of (x) $150 million plus (y) the amount permitted to be incurred under the ABL Facility following a commitment increase thereto pursuant to Section 2.15 of the ABL Facility as in effect on the Closing Date and (2) the Borrowing Base (as defined in the ABL Facility as in effect on the Closing Date (and not giving effect to any subsequent amendments thereto)) plus other ABL Obligations not constituting principal and, in each case, together with any Refinancing Indebtedness in respect thereof;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) the incurrence of Indebtedness by Restricted Subsidiaries that are not Guarantors in the form of ordinary course working capital lines of credit or other local lines of credit that is non-recourse to any Loan Party and is not secured by assets constituting Collateral, together with any Refinancing Indebtedness in respect thereof;

(30) (a) Credit Agreement Refinancing Indebtedness, (b) Permitted Incremental Equivalent Debt and (c) Permitted Debt Exchange Notes;

(31) Permitted Ratio Debt;

(32) the incurrence of Indebtedness arising out of any Sale-Leaseback Transaction;

(33) the incurrence of Indebtedness to the seller of any business or assets acquired by the Borrower or any Restricted Subsidiary in a Permitted Acquisition or other similar Investment (including Indebtedness to finance the payment of earnout obligations owing to such seller as a result of such transaction); *provided* that the aggregate amount of Indebtedness permitted under this Section 7.02(b)(33) at any one time outstanding shall not exceed the greater of (x) $40.0 million and (y) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto;

(34) the incurrence of Indebtedness in an amount not to exceed the aggregate amount of the Available Amount at such time; *provided* that no Event of Default under Section 8.01(1) or Section 8.01(6) then exists or shall have occurred or be continuing after giving effect to such incurrence of such Indebtedness;

(35) [reserved];

(36) [reserved];

(37) Indebtedness of any Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary so long as such Indebtedness was not incurred by such Unrestricted Subsidiary in contemplation of such redesignation (it being acknowledged that (x) a Person that becomes a direct or indirect Restricted Subsidiary of the Borrower as a result of a Permitted Acquisition or permitted Investment may remain liable with respect to Indebtedness existing on the date of such acquisition (and not incurred in contemplation thereof) and (y) an Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary may remain liable with respect to Indebtedness existing on the date of such redesignation (and not incurred in contemplation thereof)); and

(38) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (36) above;

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (38) above, the Borrower, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses as determined by the Borrower at such time; *provided* that all Indebtedness incurred hereunder on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and may not be reclassified;

(2) the Borrower is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 7.02(b), subject to the proviso to the preceding clause (1) of this Section 7.02(c);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to a fixed dollar Basket under Section 7.02(b) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under an applicable incurrence test available under Section 7.02(b), then the applicable incurrence test under Section 7.02(b) will be calculated with respect to such incurrence under such incurrence test without regard to any incurrence under a fixed dollar Basket then available under Section 7.02(b); *provided* that unless the Borrower elects otherwise, the incurrence of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under the then available incurrence test under Section 7.02(b) to the extent permitted with the balance incurred under a then available fixed dollar Basket under Section 7.02(b); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred to refinance Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to clauses (2), (3), (4), (12), (13), (14), (23) and (25) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay accrued but unpaid interest and dividends and premiums, defeasance costs and fees and expenses incurred in connection with such refinancing.

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness or Disqualified Stock or Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness, Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated (or the applicable growth component with respect to such Basket, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, Disqualified Stock or Preferred Stock (as applicable) being refinanced *plus* (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including OID, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness, Disqualified Stock or Preferred Stock incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

For purposes of determining compliance with this Section 7.02, if any Indebtedness is refinanced in reliance on a Basket measured by reference to a percentage of Adjusted EBITDA, and such refinancing would cause the percentage of Adjusted EBITDA to be exceeded if calculated based on the Adjusted EBITDA on the date of such refinancing, such percentage of Adjusted EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Indebtedness does not exceed the sum of (i) the principal amount of such Indebtedness being refinanced, *plus* (ii) the related costs incurred or payable in connection with such refinancing.

Section 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions but including, in each case, pursuant to a Division), except that:

(1) Subject to Section 3.03(a) of the Security Agreement, Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that

(a) the Borrower shall be the continuing or surviving Person, and

(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia;

(2)

(a) (1) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (2) any Restricted Subsidiary that is a Loan Party may merger or consolidate with a Restricted Subsidiary that is not a Loan Party so long as such transaction would otherwise constitute a Permitted Investment,

(b) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person or shall otherwise constitute a Permitted Investment;

(c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

provided that in the case of clauses (b) through (d) of this Section 7.03(2), (x) no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom; *provided* that in the case of a Limited Condition Transaction, at the Borrower's option, such Event of Default may be tested in accordance with Section 1.07(8) so long as at the time of the consummation of such Limited Condition Transaction, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom and (y) the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of "Permitted Investments";

(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (x) the transferee must be a Loan Party or (y) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Restricted Subsidiary which is not a Loan Party in connection with any Investment permitted hereunder;

(4) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom; *provided* that in the case of a Limited Condition Transaction, at the Borrower's option, such Event of Default may be tested in accordance with Section 1.07(8) so long as at the time of the consummation of such Limited Condition Transaction, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower's assets, is the transferee of such assets) (any such Person, a "**Successor Borrower**"):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower; and

(C) deliver to the Administrative Agent (I) an Officer's Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) satisfies the requirements under this Section 7.03(4) and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions (similar in scope and substance to the opinions delivered to the Administrative Agent on the Closing Date) to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder, and

(iii) after giving *pro forma* effect to such incurrence, the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to clause (31) of Section 7.02(b); or

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to such transaction all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation; *provided further* that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(5) so long as no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom; *provided* that in the case of a Limited Condition Transaction, at the Borrower's option, such Event of Default may be tested in accordance with Section 1.07(8) so long as at the time of the consummation of such Limited Condition Transaction, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or result therefrom, Holdings, respectively, may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) Holdings, respectively, will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated or

(iii) in connection with a disposition of all or substantially all of Holdings' assets, the Person that is the transferee of such assets is not Holdings, as applicable (any such Person described in the preceding clauses (i) through (iii), a "**Successor Holdings**"), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which such Person is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, and

(C) (I) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which such Person is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (II) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower;

(iv) the Administrative Agent shall have received at least three (3) Business Days prior to the such transaction all documentation and other information in respect of the Successor Holdings required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement;

(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; *provided* that solely in the case of a merger or consolidation involving a Loan Party and subject to Section 1.07(8) in the case of a Limited Condition Transaction, no Event of Default shall have occurred and be continuing or result therefrom or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) shall have occurred and be continuing or result therefrom; *provided further*, that the continuing or surviving Person will be a Loan Party, in each case, which together with each of its Restricted Subsidiaries, will have complied with the applicable requirements of Section 6.11;

(7) a merger, dissolution, provisional liquidation, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 (other than under clause (2)(c) of the definition of "Asset Sale");

(8) subject to Section 3.03(a) of the Security Agreement, each of Holdings and the Borrower may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of Holdings or the Borrower, respectively, or the laws of a jurisdiction in the United States and (b) change its name;

(9) the Loan Parties and the Restricted Subsidiaries may consummate the Transactions;

(10) the commencement of any proceedings against any Restricted Subsidiary under Debtor Relief Laws to the extent it shall not constitute an Event of Default under Section 8.01(6); and

(11) the Transactions shall be permitted.

Subject to the Collateral and Guarantee Requirement, in the event a Loan Party changes its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation or (ii) chief place of business or chief executive office, each Loan Party shall within 60 days (or such longer time period as may be agreed by the Collateral Agent) after any such change, give the Collateral Agent notice of such change.

Section 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of,

(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, and to the extent the consideration received in connection with the consummation of such Asset Sale exceeds the greater of (x) $20.0 million and (y) 10.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto and is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary to the extent permitted hereunder);

(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (x) $30.0 million and (y) 15.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto on the date of the receipt of such Designated Non-Cash Consideration (or, at the Borrower's option, at the time of contractually agreeing to such Asset Sale), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; or

(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale;

(3) the Net Proceeds of such Asset Sale shall be applied and/or reinvested as (and to the extent) required by Section 2.05(2)(b); and

(4) in the event of an Asset Sale of IP Rights used or useful in connection with the Term Priority Collateral (as defined in the ABL Intercreditor Agreement), the purchaser, assignee or other transferee thereof agrees in writing to be bound by a non-exclusive royalty-free worldwide license of such IP Rights in favor of the Administrative Agent for use in connection with the exercise of the rights and remedies of the Secured Parties, which license shall be in form and substance reasonably satisfactory to the Administrative Agent, and *provided further* that in the case of an Asset Sale of IP Rights by the Borrower or one of its Restricted Subsidiaries from a third party, the transferee thereof shall be required to provide such a license only to the extent to which the applicable license gives it a right to do so.

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.05 Restricted Payments.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Restricted Subsidiary's Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(1) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(2) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, of any Covered Indebtedness, other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Covered Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement;

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as "**Restricted Payments**");

(b) The provisions of Section 7.05(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;

(2)

(a) the redemption, repurchase, defeasance, discharge, retirement, exchange or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("**Treasury Capital Stock**") or (ii) Covered Indebtedness, in each case, made in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower or any Parent Company (to the extent such Equity Interests or proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) ("**Refunding Capital Stock**"),

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance, and

(c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower were permitted under clauses (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount *per annum* no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Covered Indebtedness of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Covered Indebtedness of the Borrower or a Subsidiary Guarantor or Disqualified Stock of the Borrower or a Subsidiary Guarantor; *provided* such new Covered Indebtedness shall mature no earlier, and not have a shorter weighted average life, than the Covered Indebtedness being refinanced or exchanged,

(b) Disqualified Stock of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Covered Indebtedness of the Borrower or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence,

(c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor, made within 120 days of such sale or issuance that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02 and

(d) any Covered Indebtedness, Designated Preferred Stock or Disqualified Stock that constitutes Acquired Indebtedness or Indebtedness otherwise assumed pursuant to Section 7.02(b)(14)(a);

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower, any of its Subsidiaries or any Parent Company in connection with the Transactions; *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $15.0 million in any fiscal year (increasing to $30.0 million in any fiscal year following a Qualifying IPO by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to the next two succeeding calendar years; *provided further* that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to make a Restricted Payment with the Available Amount; *plus*

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are foregone in exchange for the receipt of Equity Interests of the Borrower or any Parent Company pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(c) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Borrower) after the Closing Date; *minus*

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employees, directors, officers, members of management, or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement; and *provided further*, that no Event of Default specified in Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) shall have occurred and be continuing or would result from the making of any Restricted Payment pursuant to this clause (4);

(5) any payments made in connection with (i) the Refinancing or exchange of Covered Indebtedness for like or other Covered Indebtedness; *provided* that (x) such Covered Indebtedness matures no earlier than the Covered Indebtedness that is Refinanced

or exchanged and (y) such Covered Indebtedness has a weighted average life to maturity no shorter than such refinanced or exchanged Covered Indebtedness and (ii) Refinancings of Covered Indebtedness assumed in connection with a Permitted Acquisition or other similar Investment permitted hereunder (and not incurred in contemplation thereof);

(6)

(a) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Restricted Subsidiary after the Closing Date;

(b) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Closing Date; *provided* that the amount of dividends and distributions paid pursuant to this clause (b) will not exceed the aggregate amount of cash actually contributed to the Borrower from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Designated Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this Section 7.05(b);

provided that, in the case of each of clauses (a) and (c) of this clause (6) to the extent such Designated Preferred Stock does not constitute Indebtedness that was incurred under Section 7.02, that for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Borrower would be able to incur $1.00 of Permitted Ratio Debt (and solely for the purpose of the testing hereunder, including all Designated Preferred Stock issued and outstanding in Consolidated Total Debt);

(7)

(a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person's purchase of Equity Interests of the Borrower or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company's common equity), following the first public offering of the Borrower's common equity or the common equity of any Parent Company after the Closing Date that is a Qualifying IPO, in an amount not to exceed the greater of (a) 7.0% per annum of the net cash proceeds received by or contributed to the Borrower other than any public sale constituting an Excluded Contribution and (b) 6.0% per annum of the Market Capitalization at the time of declaration of such Restricted Payment; *provided* that no Event of Default pursuant to Section 8.01(1) or 8.01(6) (solely with respect to the Borrower) shall have occurred and be continuing or would result therefrom;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments made with the Available Amount; *provided* that if this clause (10) is utilized to make a Restricted Investment, the amount deemed to be utilized under this clause (10) will be the amount of such Restricted Investment at any time outstanding (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of "Investment"); *provided further* that no Event of Default pursuant to Section 8.01(1) or 8.01(6) (solely with respect to the Borrower) shall have occurred and be continuing or would result therefrom;

(11) distributions or payments of Securitization Fees or distributions of amounts received in connection with a Qualified Securitization Facility;

(12) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or owed to any Affiliate(s), including the Closing Date Distribution;

(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Covered Indebtedness from Excluded Proceeds (except to the extent utilized to make Restricted Payments pursuant to clause (10) above);

(14) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes and other fees, taxes and expenses required to maintain their corporate or other legal existence;

(b) for any taxable period for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "**Tax Group**"), to pay the portion of any U.S. federal, foreign, state and local income taxes of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and its Subsidiaries (net of any payments of such taxes made by the Borrower); *provided* that for each taxable period, (A) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and its Subsidiaries, as applicable, would have been required to pay as stand-alone taxpayers or a stand-alone Tax Group and (B) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Borrower or any Restricted Subsidiary for such purpose;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management and consultants of any Parent Company, and any payroll, social security or similar taxes thereof;

(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company attributable to the ownership of the Borrower and its Restricted Subsidiaries;

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Borrower or its Restricted Subsidiaries under Section 6.19(b) (other than clause 2(a) thereof);

(g) interest or principal on Indebtedness the proceeds of which have been contributed to the Borrower or any Restricted Subsidiary or that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with Section 7.02;

(h) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; *provided* that:

(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment,

(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or another Loan Party (which, for the avoidance of doubt, shall not be designated as Excluded Contributions) or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or another Loan Party (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment,

(iii) such Parent Company and its Affiliates (other than the Borrower or any Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement,

(iv) any property received by the Borrower may not increase amounts available for Restricted Payments with the Available Amount;

(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(i) to the extent constituting a Restricted Payment, amounts due and payable pursuant to any Management Services Agreement; and *provided* that no Event of Default specified in Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) shall have occurred and be continuing or would result from the making of any Restricted Payment pursuant to this clause (14)(i); and

(j) following a Qualifying IPO, any costs and expenses in connection with becoming or continuing to exist as a public company (including Public Company Costs);

(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents); *provided* that no Event of Default shall have occurred and be continuing or would result therefrom;

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(17) unlimited additional Restricted Payments shall be permitted; *provided* that (a) after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 1.25 to 1.00 (or, in the case of (i) Restricted Investments, 1.75 to 1.00 or (ii) Covered Indebtedness, 1.50 to 1.00) and (b) no Event of Default under Section 8.01(1) or 8.01(6) (solely with respect to the Borrower) shall have occurred and be continuing or would result therefrom;

(18) making payments for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 6.19;

(19) payments and distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

(20) the payment of dividends, other distributions and other amounts by the Borrower to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest or principal (including AHYDO Payments) on Indebtedness, the proceeds of which have been permanently contributed to the Borrower or any Restricted Subsidiary (which, for the avoidance of doubt, shall not be designated as Excluded Contributions) and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with this Agreement; *provided* that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Borrower for the incurrence of such Indebtedness;

(21) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate amount since the date of this Agreement not to exceed the sum of (a) the principal amount of such Convertible Indebtedness *plus* (b) any payments received by the Borrower or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(22) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower's common stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common stock upon any early termination thereof;

(23) Restricted Payments of the type referred to in clause (C) of the definition thereof in connection with the mandatory redemption of Disqualified Stock or Designated Preferred Stock;

(24) Restricted Payments of the type referred to in clauses (A) or (B) of the definition thereof in an aggregate amount not to exceed the greater of (x) $35.0 million and (y) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto; *provided*, that any Restricted Payment made using this clause (24) will cease to be deemed incurred or issued or outstanding for the purpose of this clause (24) but will be deemed incurred or issued under clause (17) from and after the first date on which the Borrower or such Restricted Subsidiaries could have made such Restricted Payment under clause (17) without reliance on this clause (24); *provided further*, that no Event of Default specified in Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or would result from the making of any Restricted Payment pursuant to this clause (24) (the "**General RP Basket**");

(25) Restricted Payments of the type referred to in clauses (C) and (D) of the definition thereof in an aggregate amount not to exceed the sum of (I) the greater of (x) $35.0 million and (y) 20.0% of Adjusted EBITDA of the Borrower and its Restricted Subsidiaries as of the most recently ended Test Period calculated giving *pro forma* effect thereto *plus* (II) in the Borrower's sole discretion, any unused amount of the General RP Basket; *provided*, that any Restricted Payment made using this clause (25) will cease to be deemed incurred or issued or outstanding for the purpose of this clause (25) but will be deemed incurred or issued under clause

(17) from and after the first date on which the Borrower or such Restricted Subsidiaries could have made such Restricted Payment under clause (17) without reliance on this clause (25); *provided further*, that no Event of Default specified in Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing or would result from the making of any Restricted Payment pursuant to this clause (25);

(26) Restricted Payments of the type referred to in clauses (C) or (D) of the definition thereof in an aggregate amount not to exceed the amount available pursuant to this Section 7.05 for the making of Restricted Payments of the type referred to in clauses (A) and (B) of the definition thereof; and

(27) Restricted Payments in connection with any Permitted Reorganization Transaction or IPO Reorganization Transaction;

provided that for purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (26) of Section 7.05(b) or one or more of the clauses contained in the definition of "Permitted Investments," the Borrower will be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among such clauses (1) through (26) of Section 7.05(b) or one or more clauses contained in the definition of "Permitted Investments," in any manner that otherwise complies with this Section 7.05.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.

Section 7.06 [Reserved].

Section 7.07 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to:

(1)

(a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Guarantor;

(2) make loans or advances to the Borrower or to any Restricted Subsidiary that is a Guarantor;

(3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Guarantor; or

(4) with respect to the Borrower or any Subsidiary Guarantor, (a) Guaranty the Obligations or (b) create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;

provided that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any Obligation (including the application of any remedy bars thereto) to any other Obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.07(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(a) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation and any definitive documentation in respect of the Indebtedness set forth on Schedule 7.02(3);

(b) the ABL Loan Documents;

(c) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (3) above on the property so acquired;

(d) applicable Law or any applicable rule, regulation or order;

(e) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;

(f) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(g) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;

(h) Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;

(i) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business or consistent with industry practice;

(j) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to IP Rights and other agreements;

(k) restrictions created in connection with any Qualified Securitization Facility;

(l) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(m) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Restricted Subsidiary;

(n) customary provisions restricting assignment of any agreement;

(o) restrictions arising in connection with cash or other deposits permitted under Section 7.01; any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to any Restricted Subsidiary than (A) the restrictions contained in the Loan Documents as of the Closing Date or the ABL Loan Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(p) (i) Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any Refinancing Indebtedness in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice;

(q) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.07;

(r) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; *provided* that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(s) any encumbrances or restrictions of the type referred to in clauses (1), (2) or (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (r) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(t) existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(u) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred pursuant to Section 7.02 is incurred.

Section 7.08 Modification of Terms of Covered Indebtedness. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower (on the basis of such proposed amendments, modifications or changes taken as a whole), any term or condition of any Covered Indebtedness having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed), which would impact the ability to provide the Collateral and Guarantees required pursuant to the Collateral and Guarantee Requirement; *provided*, *however*, that no amendment, modification or change of any term or condition of any Covered Indebtedness permitted by any subordination provisions or intercreditor provisions set forth in the applicable Covered Indebtedness or any other stand-alone subordination agreement or intercreditor agreement in respect thereof and, in each case consented to by the Administrative Agent shall be deemed to be materially adverse to the interests of the Lenders.

Section 7.09 Holdings. Holdings will not conduct, transact or otherwise engage in any business or operations other than the following (and activities incidental thereto):

(1) the ownership or acquisition of the Capital Stock (other than Disqualified Stock) of any other Successor Holdings or the Borrower,

(2) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance,

(3) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the combined group of Holdings and the Borrower,

(4) the performance of its obligations under and in connection with, and payments with respect to, the Loan Documents, the ABL Loan Documents and related documentation in respect of the foregoing and any documents relating to other Indebtedness permitted under Section 7.02 (including, for the avoidance of doubt, the incurrence of Qualified Holding Company Debt),

(5) any public offering of its common stock or any other issuance or registration of its Capital Stock for sale or resale not prohibited by this Article VII, including the costs, fees and expenses related thereto,

(6) repurchases of Indebtedness through open market purchases and Dutch auctions (in the case of Loans, to the extent permitted hereunder),

(7) the incurrence of Qualified Holding Company Debt,

(8) any transaction that Holdings is permitted to enter into or consummate under this Article VII and any transaction between or among Holdings and the Borrower or any one or more Restricted Subsidiaries permitted under this Article VII, including:

(a) making any payment(s) or Restricted Payment(s) (i) to the extent otherwise permitted under this Section 7.09 and (ii) with any amounts received pursuant to transactions permitted under Section 7.05 (or the making of a loan to any Parent Company in lieu of any such payment(s) or Restricted Payment(s)) or holding any cash received in connection therewith pending application thereof by Holdings,

(b) making any Investment to the extent (i) payment therefor is made solely with the Capital Stock of Holdings (other than Disqualified Stock), the proceeds of Restricted Payments received from the Borrower or proceeds of the issuance of, or contribution in respect of the, Capital Stock (other than Disqualified Stock) of Holdings and (ii) any property (including Capital Stock) acquired in connection therewith is contributed to the Borrower or a Subsidiary Guarantor (or, if otherwise permitted by Section 7.05 or constituting a Permitted Investment, a Restricted Subsidiary) or the Person formed or acquired in connection therewith is merged with the Borrower or a Subsidiary Guarantor;

(c) guaranteeing the obligations and granting of Liens of the Borrower and its Subsidiaries to the extent such obligations are not prohibited hereunder;

(d) incurrence of Indebtedness of Holdings representing deferred compensation to employees, consultants or independent contractors of Holdings and unsecured Indebtedness consisting of promissory notes issued by any Loan Party to future, present or former employees, directors, officers, managers, distributors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any Subsidiary or any Parent Company to finance the retirement, acquisition, repurchase, purchase or redemption of Capital Stock of Holdings,

(e) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes,

(f) providing indemnification to officers and directors and as otherwise permitted in this Article VII,

(g) activities incidental to the consummation of (i) any Permitted Reorganization Transaction or IPO Reorganization Transaction or (ii) the Transactions,

(h) the making of any loan to any officers or directors contemplated by Section 7.05 or constituting a Permitted Investment, the making of any investment in the Borrower or any Subsidiary Guarantor or, to the extent otherwise allowed under Section 7.05 or constituting a Permitted Investment, a Restricted Subsidiary,

(i) making contributions to the capital of its Subsidiaries, or

(j) making Investments in cash and Cash Equivalents.

(9) activities incidental to the businesses or activities described in clauses (1) through (8) of this Section 7.09.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an "Event of Default":

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. Any Loan Party or, in the case of Section 7.09, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(1) or 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; or

(3) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(4) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by the Borrower or any Subsidiary Guarantor herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made and such representation, warranty, certification or statement of fact (if curable) shall remain incorrect for a period of 30 days after notice thereof from the Administrative Agent to the Borrower; or

(5) Cross-Default and Cross-Acceleration. Any Loan Party or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness referred to in the foregoing clause (a), or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower, or any Subsidiary Guarantor or any Restricted Subsidiary) with respect to such Indebtedness, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed

(automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02, (B) this clause (5)(b) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of the non-payment of such Indebtedness or the non-payment or non-performance of obligations related thereto is to convert such Indebtedness into Equity Interests (other than Disqualified Stock) and cash in lieu of fractional shares and (C) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided further* that an ABL Event of Default under Section 8.01 of the ABL Credit Agreement shall not constitute an Event of Default hereunder unless and until (I) in the case of an ABL Event of Default under Section 8.01(b) of the ABL Credit Agreement for failure to comply with the ABL Financial Covenant (after giving effect to all applicable grace periods and the ability to make Specified Equity Contributions in accordance with the terms of the ABL Credit Agreement), a majority of the ABL Lenders have actually declared all ABL Obligations to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by a majority of the ABL Lenders on or before such date or (II) in the case of all other such ABL Events of Default the earlier of (1) 60 consecutive calendar days shall have passed since the occurrence of such ABL Event of Default and (2) the date on which a majority of the ABL Lenders have actually declared all ABL Obligations to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by a majority of the ABL Lenders on or before such date; or

(6) Insolvency Proceedings, etc. Any Loan Party or any Restricted Subsidiary that is a Significant Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, provisional liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, provisional liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) calendar days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan or (b) with respect to a Foreign Plan a termination, withdrawal or noncompliance with applicable Law or plan terms, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason, other than (a) as expressly permitted by any Loan Documents (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions;

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, a valid and perfected Lien with the priority required by the Applicable Intercreditor Agreement (or other security purported to be created on the applicable Collateral) on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that any such loss of perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents or to file Uniform Commercial Code amendments relating to a Loan Party's change of name or jurisdiction of formation (solely to the extent that the Borrower provides the Collateral Agent written notice thereof in accordance with the Security Agreement, and the Collateral Agent and the Borrower have agreed that the Collateral Agent will be responsible for filing such amendments) and continuation statements or to take any other action primarily within its control with respect to the Collateral; or

(11) Change of Control. There occurs any Change of Control.

Section 8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments will be terminated;

(2) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(3) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to the Applicable Intercreditor Agreement then in effect, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, the other Obligations under Secured Hedge Agreements and Cash Management Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Section 8.04 Expired Defaults; Net Short Lenders.

(1) The Administrative Agent shall not be entitled to provide a notice of Default under clause (3) or clause (4) of Section 8.01, or exercise remedies pursuant to an Event of Default under clause (2) of Section 8.01, with respect to any such action, event, occurrence or other matter described in any such clause that was reported to the Administrative Agent and the Lenders, or otherwise reported publicly, more than two (2) years after the date on which such action, event, occurrence or other matter was reported to the Administrative Agent and the Lenders or publicly announced; *provided* that such limitation shall not apply to the extent the Administrative Agent has commenced any remedial action or has provided notice to the Borrower that it reserved its rights relating to such Default.

(2) Any notice of Default, notice of acceleration or instruction to the Administrative Agent to provide a notice of Default, notice of acceleration or take any other action (a "**Lender Direction**") provided by any one or more Lenders (each a "**Directing Lender**") will be deemed to be a representation from each such Lender to the Borrower and the Administrative Agent that such Lender is not Net Short (a "**Position Representation**"), which representation, in the case of a Lender Direction relating to the delivery of a notice of Default shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Obligations are accelerated. In addition, each Directing Lender is deemed, at the time of providing a Lender Direction, to covenant to provide the Borrower with such other information as the Borrower may reasonably request from time to time in order to verify the accuracy of such lender's Position Representation within five Business Days of request therefor (a "**Verification Covenant**").

(3) If, following the delivery of a Lender Direction, but prior to acceleration of the Obligations, the Borrower determines in good faith that there is a reasonable basis to believe a Directing Lender was, at any relevant time, in breach of its Position Representation and provides to the Administrative Agent an Officer's Certificate stating that the Borrower has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Lender was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Lender Direction, and solely to the extent that any Lender Direction is not otherwise made or action by the Administrative Agent is not otherwise being taken in accordance with the Loan Documents without the applicable Lender participating in such Lender Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed until the earlier of (x) a final and non-appealable determination of a court of competent jurisdiction on such matter or (y) the Borrower has provided to the Administrative Agent an Officer's Certificate stating that the applicable Directing Lender has provided information verifying the accuracy of such Lender's deemed representation or warranty with respect to such Directing Lender not being Net Short. Following receipt of an Officer's Certificate pursuant to clause (y) of the preceding sentence, the Administrative Agent shall be permitted to act in accordance with such Lender Direction. Any determination by a court of competent jurisdiction that there was a breach of the Position Representation shall result in such Lender's participation in such Lender Direction being disregarded; and, if, without the participation of such Lender, the percentage of Obligations held by the remaining Lenders that provided such Lender Direction would have been insufficient to validly provide such Lender Direction, such Lender Direction shall be void ab initio, with the effect that any resulting acceleration shall be voided and the Administrative Agent shall be deemed not to have received such Lender Direction.

(4) Notwithstanding anything in the preceding two paragraphs to the contrary, any Lender Direction delivered to the Administrative Agent during the pendency of an Event of Default under Section 8.01(6) shall not require compliance with the foregoing paragraphs.

(5) For the avoidance of doubt, the Administrative Agent shall be entitled to conclusively rely on any Lender Direction delivered to it in accordance with this Agreement, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. The Administrative Agent shall have no liability to the Borrower, any Lender or any other person in acting in good faith on a Lender Direction.

ARTICLE IX

ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints Bank of America, to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.09, 9.10, 9.11, 9.12 and 9.16) are solely for the benefit of the Administrative Agent and the Lenders and the Borrower shall not have rights as a third-party beneficiary of any such provision.

(2) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a Lender and a potential Hedge Bank or Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any Applicable Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.03 Exculpatory Provisions. The Administrative Agent, Collateral Agent and the Arrangers shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent) and an Arranger:

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent or Arranger is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent or Arranger is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent or Arranger to liability or that is contrary to any Loan Document or applicable law; and

(3) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent, Arranger or any of their Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in

Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Term Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arranger is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arranger shall be entitled to all indemnification and reimbursement rights in favor of the Administrative Agent as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arranger shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

Section 9.04 Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Term Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Term Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Term Note for any recitals, statements, information,

representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

Section 9.05 Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders (or such greater percentage of Lenders required) with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders (or such greater percentage of Lenders required); and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Term Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders (or such greater percentage of Lenders required).

Section 9.06 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.07 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to their respective "percentage" as used in determining the Required Lenders for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or any other Agent-Related Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.10 Holders. The Administrative Agent may deem and treat the payee of any Term Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Term Note shall be conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Term Note or of any Term Note or Term Notes issued in exchange therefor.

Section 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Business Days prior written notice to the Lenders and the Borrower. If the Administrative Agent is in material breach of its obligations hereunder as Administrative Agent, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent is a Defaulting Lender, the Borrower may remove the Defaulting Lender from such role upon 15 days prior written notice to the Lenders. Such resignation or removal shall take effect upon the appointment of a successor Administrative Agent as provided below.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower's approval shall not be required if an Event of Default under Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed and shall have accepted such appointment within such 30 Business Day after the retiring Administrative Agent gives notice of its resignation (the "**Resignation Effective Date**"), the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed; *provided* that the Borrower's consent shall not be required if an Event of Default under Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) has occurred and is continuing), may (but shall not be obligated to) then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Business Day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent's resignation shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged

from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11).

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Upon a resignation of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

Section 9.12 Collateral Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes and directs the Collateral Agent to take the actions to be taken by them as set forth in Section 7.04 and 10.24.

Each Lender hereby agrees, and each holder of any Term Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders (or such greater percentage of Lenders required) in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders (or such greater percentage of Lenders required) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in this Section 9.12, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.12.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 10.24 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

Section 9.13 Certain ERISA Matters.

(1) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and each other Arranger and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(a) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(b) the prohibited 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 so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code, such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(c) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (a) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement.

(2) In addition, unless sub-clause (a) in the immediately preceding clause (1) is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and each other Arranger and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent or any other Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;
and any custodian, receiver, assignee, trustee, provisional liquidator, 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 Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Administrative Agent**" and collectively as "**Supplemental Administrative Agents**").

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 9.16 Intercreditor Agreements. (a) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the ABL Intercreditor Agreement or any other Applicable Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the ABL Intercreditor Agreement or any other Applicable Intercreditor Agreement, on the other hand, the terms and provisions of the ABL Intercreditor Agreement or such other Applicable Intercreditor Agreement, as the case may be, shall control, and (c) each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereunder authorizes and instructs the Administrative Agent and Collateral Agent to execute the ABL Intercreditor Agreement or any other Applicable Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

Section 9.17 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within 10 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because

such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 9.19 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender (the "**Credit Party**"), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount. Notwithstanding anything to the contrary herein or in any other Loan Document, the provisions of this paragraph are solely agreements among the Credit Parties and the Administrative Agent and shall not impose any obligations on the Borrower or the other Loan Parties.

ARTICLE X

MISCELLANEOUS

Section 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment or waiver contemplated in clause (i) below), which shall only require the consent of the Required Facility Lenders under the applicable Facility or Facilities) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible, however, to the extent the final form of such waiver, consent or amendment has been delivered to the Administrative Agent at least 1 Business Day prior to the proposed effectiveness of the consents by the Lenders party thereto, the Administrative Agent shall acknowledge such waiver, consent or amendment (i) immediately, in the case of any

amendment which does not require the consent of any existing Lender under this Agreement (*provided* that the failure to acknowledge such amendment within such 1 Business Day period shall be deemed to be an acknowledgment) or (ii) otherwise, within 2 hours of the time copies of the Required Lender consents or other applicable Lender consents required by this Section 10.01 have been provided to the Administrative Agent and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums: the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (I) of the proviso immediately succeeding clause (i) of this Section 10.01(1)) any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender; *provided* that only the consent of (A) the Required Lenders shall be necessary to amend (1) the definition of "Default Rate" and (2) the MFN Protection Provision and (B) the Required Lenders will be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Facility Lenders," or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender;

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) without the prior written consent of each Lender directly and adversely affected thereby, (x) subordinate any of the Obligations, including the payment priority thereof, to any other Indebtedness or (y) subordinate the Lien securing any of the Obligations on all or substantially all of the Collateral to any other Lien securing any other Indebtedness, except in the case of each of the foregoing clauses (x) and (y) (A) any Indebtedness that is expressly permitted under the Loan Documents as in effect on the Closing Date to be senior to the Obligations and/or be secured by a Lien that is senior to the Lien securing the Obligations, (B) any Indebtedness incurred pursuant to a bona fide revolving credit facility (including the ABL Facility) or any customary asset-based, factoring, securitization or other similar facility the incurrence of which is otherwise approved by the Required Lenders, (C) any "debtor-in-possession" facility or (D) any other Indebtedness so long as such Indebtedness is offered ratably to all Lenders holding such Obligations;

(h) without the prior written consent of each Lender directly and adversely affected thereby, amend, modify or waive the definition of "Pro Rata Share", the pro rata sharing provisions of Section 8.03 or Section 2.12 or the waterfall provisions of Section 8.03, in each case other than to the extent in connection with a transaction described in clause (g) of this Section 10.01 for which Required Lender consent is sufficient and has been achieved;

(i) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding and the rate of interest applicable thereto) which directly affects Lenders of one Facility and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Facility;

provided that:

(I) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(II) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders) (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Applicable Intercreditor Agreement (i) that is for the purpose of adding the holders of Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Permitted Indebtedness that is secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Applicable Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the Applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Applicable Intercreditor Agreement; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) Without limiting the scope of Section 10.01(3) below, any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related

documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Term Loans, any borrowing of Refinancing Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15, 2.16 or 2.20, respectively;

(F) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any other Security Document as may be necessary or appropriate in the opinion of the Collateral Agent and (ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e); and

(G) no consent of the Required Lenders or Required Facility Lenders of any Class shall be required for any amendment, waiver or consent that requires the consent of the Lenders directly affected thereby.

(2) [Reserved].

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents and related documents executed by any Loan Party or any Restricted Subsidiary in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein);

(b) if the Administrative Agent and the Borrower shall have jointly identified an obvious error (including, but not limited to, an incorrect cross-reference) or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative

Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective; and

(c) technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (and no other Person) to the extent necessary to (i) to integrate any Incremental Term Facility, Refinancing Loans, Extended Loans or Replacement Loans, (ii) to integrate the terms or conditions from any Incremental Amendment that are more restrictive than this Agreement in accordance with Section 2.14(7)(d), (iii) to increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to any Class or Classes of Lenders hereunder, (iv) increase, expand and/or extend the call protection provisions and any "most favored nation" provisions benefiting any Class or Classes of Lenders hereunder (including, for the avoidance of doubt, the provisions of Sections 2.18 and 2.14(8) hereof) and/or (v) modify any other provision hereunder or under any other Loan Document in a manner more favorable to the then-existing Lenders or Class or Classes of Lenders, in each case in connection with the issuance or incurrence of any Incremental Term Facility or other Indebtedness permitted hereunder, where the terms of any such Incremental Term Facility or other Indebtedness are more favorable to the lenders thereof than the corresponding terms applicable to other Loans or Commitments then existing hereunder, and it is intended that one or more then-existing Classes of Loans or Commitments under this Agreement share in the benefit of such more favorable terms in order to comply with the provisions hereof relating to the incurrence of such Incremental Term Facility or other Indebtedness; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Term Loans, any borrowing of Refinancing Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively;

(d) this Agreement and any other Loan Document may be amended (or amended and restated) solely with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in a manner not materially adverse to the Lenders taken as a whole (in their capacities as such) (as determined by the Administrative Agent in good faith) in connection with incurring a fungible debt facility; and

(e) each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Arranger (collectively, the "**Agent Parties**") have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the Arrangers for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and the Arrangers (promptly following a written demand therefor, together with backup documentation supporting such reimbursement request) incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Latham & Watkins LLP and, if necessary, a single local counsel in each relevant material jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each other Lender, the Arrangers and their respective Related Persons (collectively, the "**Indemnitees**") from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities to the extent related to the Loan Parties) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any (i) actual or threatened claim, litigation, investigation, proceeding or Environmental Liabilities relating to the Transactions or to each Loan Party and each of its Restricted Subsidiaries and their respective operations and any of the respective currently or formerly owned, leased or operated real estate, facilities or properties, or (ii) to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (w) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (x) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) in the case of any loss, claim damage or liability brought by any Loan Party or any of its Restricted Subsidiaries, a material breach of the obligations under the Engagement Letter, the Agency Fee Letter or the other Loan Documents of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of the Borrower or any of their Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating

to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within 20 Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by the Borrower under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.

Section 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an Eligible Assignee and (A) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, in accordance with the provisions of Section 10.07(h) and (B) in the case of any Eligible Assignee that is a Loan Party or any Subsidiary thereof, in accordance with the provisions of Section 10.07(l), (ii) by way of participation in accordance with the provisions of

Section 10.07(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto (other than the replacement of the Administrative Agent pursuant to Article IX above) shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1.0 million, unless either (x) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (y) each of the Administrative Agent and the Borrower otherwise consents; *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or Section 8.01(6) (solely with respect to Holdings and the Borrower) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date or (2) in respect of an assignment of all or a portion of the Loans, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within 10 Business Days after having received notice of a failure to respond to such request for assignment; *provided further* that no consent of the Borrower shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l); and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) of all or a portion of the Loans pursuant to Section 10.07(g), (h), (k) or (l).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). Other than in the case of assignments pursuant to Section 10.07(l), the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. Each assignee Lender shall be required to represent in the Assignment and Assumption that it is not a Disqualified Institution or an Affiliate of a Disqualified Institution.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to any Loan Party or any of its Subsidiaries except as permitted under Section 2.05(1)(e) or Section 10.07(l), (B) subject to Sections 10.07(h), (k) and (l) below, to any Affiliate of the Borrower, (C) to a natural person or (D) to any Disqualified Institution.

This Section 10.07(b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07 (and, in the case of an Affiliated Lender or a Person that, after giving effect to such assignment, would become an Affiliated Lender, to the requirements of clause (h) of this Section 10.07), from and after the effective date specified in each Assignment and Assumption, other than in connection with an assignment pursuant to Section 10.07(l), (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Term Note, the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it, each Affiliated Lender Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans and amounts due under Section 2.03, owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent-

Related Persons and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender, nor shall the Administrative Agent be obligated to monitor the aggregate amount of the Term Loans or Incremental Term Loans held by Affiliated Lenders.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower or any Affiliate or Subsidiary of the Borrower or a Disqualified Institution to the extent the list of Disqualified Institutions has been made available to the Lenders, following reasonable request therefor) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (other than clauses (d) and (i) thereof) that directly affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable as though it were a Lender)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The

entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Loans and Commitments under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) Affiliated Lenders (A) will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II or (B) will not make any challenge to the Administrative Agent's or any other Lender's attorney-client privilege on the basis of its status as a Lender;

(ii) each Affiliated Lender that purchases any Loans or Commitments will clearly identify itself as an Affiliated Lender in any Affiliated Lender Assignment and Assumption executed in connection with such purchases or sales and each such Affiliated Lender Assignment and Assumption shall contain customary "big boy" representations but no requirement to make representations as to the absence of any material nonpublic information;

(iii) as a condition to each assignment pursuant to this subsection (h), the Administrative Agent and the Borrower shall have been provided a notice in connection with each assignment to an Affiliated Lender or a Person that upon the effectiveness of such assignment the assignee would constitute an Affiliated Lender pursuant to which such Affiliated Lender (in its capacity as such) shall waive any right to bring any action in connection with such Loans and Commitments against the Administrative Agent, in its capacity as such;

(iv) the aggregate principal amount of Term Loans of any Class under this Agreement held by Affiliated Lenders at the time of any such purchase or assignment shall not exceed 25.0% of the aggregate principal amount of Term Loans of such Class outstanding at such time under this Agreement (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Term Loans of any Class held by Affiliated Lenders exceeding the Affiliated Lender Cap (determined at the time of purchase), the assignment of such excess amount will be void *ab initio*; and

(v) the assigning Lender and the Affiliated Lender purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit D-2 hereto (an "**Affiliated Lender Assignment and Assumption**").

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Term Loans pursuant to this subsection (h) may, in its sole discretion, contribute, directly or indirectly, the principal amount of such Term Loans or any portion thereof, *plus* all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Term Loans and such contribution will increase the amount of the Available Amount. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Term Loans shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

Each Affiliated Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within 10 Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within 10 Business Days) if it becomes an Affiliated Lender. The Administrative Agent may conclusively rely upon any notice delivered pursuant to the immediately preceding sentence or pursuant to clause (v) of this subsection (h) and shall not have any liability for any losses suffered by any Person as a result of any purported assignment to or from an Affiliated Lender.

(i) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders," or "Required Facility Lenders" to the contrary, for purposes of determining whether the Required Lenders and Required Facility Lenders (in respect of a Class of Term Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(j), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and:

(i) all Term Loans held by any Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders and Required Facility Lenders (in respect of a Class of Term Loans) have taken any actions; and

(ii) all Term Loans held by Affiliated Lenders shall be deemed to have been voted in the same proportion as non-Affiliated lenders voting on such matter unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on other Lenders.

(j) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that, and each Affiliated Lender Assignment and Assumption shall provide a confirmation that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in the same proportion as non-Affiliated Lenders voting on such matter, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it as the Administrative Agent directs; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a disproportionately adverse manner than the proposed treatment of similar Obligations held by Term Lenders that are not Affiliated Lenders.

(k) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Term Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(l) Any Lender may, so long as no Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings, the Borrower or any Subsidiary of the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) or (y) open market purchases on a non-pro rata basis; *provided* that (x) if the assignee is Holdings or a Subsidiary of the Borrower, upon such assignment, transfer or contribution, the applicable assignee shall automatically be deemed to have contributed or transferred the principal amount of such Term Loans, *plus* all accrued and unpaid interest thereon, to the Borrower; or (y) if the assignee is the Borrower (including through contribution or transfers set forth in clause (x)), (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(n) Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings. In addition, if any assignment or participation is made to any Disqualified Institution without the Borrower's express prior written consent (which consent shall state expressly that the Borrower acknowledges that the assignee Lender is a Disqualified Institution) in violation of clause (v) of Section 10.07(b), the Borrower may, in addition to any other rights and remedies that it may have against such Disqualified Institution, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(o) Notwithstanding anything herein to the contrary, the provisions of this Section 10.07 shall not apply retroactively to disqualify any person that has previously acquired an assignment or interest in any of the Term Loans with respect to amounts previously acquired to the extent such party was not a Disqualified Institution at the time of the applicable assignment but for only so long as such person continues to hold such Term Loans. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

Section 10.08 [Reserved].

Section 10.09 Confidentiality. Each of the Agents, the Arrangers and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided*, *however*, that such Agent, Arranger or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided*, *however*, that each Agent, each Arranger and each Lender agrees to seek confidential treatment with respect to any such disclosure, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent, such Arranger or such Lender, as applicable, agrees (x) that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of any audit or regulatory examination) unless such notification is prohibited by law, rule or regulation and (y) to seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be an Additional Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a "due diligence" defense, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate of the Borrower or (z) is independently developed by the Agents, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09 or (i) in order to enforce its respective rights under any Loan Document in any action or proceeding.

For purposes of this Section 10.09, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Arranger and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

Section 10.10 Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.12 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in.pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.13 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, waivers and consents) waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 10.14 Survival of Representations and Warranties. Subject to Section 1.02(9), all representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.16 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

Section 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and assigns.

Section 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.

Section 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Beneficial Ownership Regulation and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of

each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agents, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings 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 Agent, Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers, 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, Holdings and their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.

(a) The Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the

Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease to the extent such Loan Party retains no right, title or interest therein, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that a Subsidiary Guarantor shall be released from its Guaranty upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary, or otherwise becoming an Excluded Subsidiary (*provided* that a wholly-owned Restricted Subsidiary that becomes a non-wholly-owned Subsidiary shall be released from its Guarantee under the Guaranty pursuant to Section 10.01 if it is no longer wholly-owned as a result of a transaction for a bona fide business purpose and on an arm's length basis (and is not entered into for purposes of releasing such guarantee)). The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) any contingent obligations not then due) have been paid in full in cash and all Commitments have terminated, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) any contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded

or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, provisional liquidation, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Permitted Lien specified in clause (7) of the definition thereof securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4) of Section 7.02(b) in any Collateral, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any such Permitted Lien to be senior to the Liens in favor of the Collateral Agent.

(d) Notwithstanding the foregoing or anything in the Loan Documents to the contrary, at the direction of the Required Lenders, the Administrative Agent may, in exercising remedies, take any and all necessary and appropriate action to effectuate a credit bid of all Loans (or any lesser amount thereof) for the Borrower's assets in a bankruptcy, foreclosure or other similar proceeding, forbear from exercising remedies upon an Event of Default, or in a bankruptcy proceeding, enter into a settlement agreement on behalf of all Lenders.

Section 10.25 [Reserved].

Section 10.26 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.27 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 and accepts 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any 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 the applicable Resolution Authority.

Section 10.28 Acknowledgement Regarding Any Supported QFCs.

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**", and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(b) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party

or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

TORRID LLC, as the Borrower

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

TORRID INTERMEDIATE, LLC,
as Holdings

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

[Signature Page to Credit Agreement]

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent

By: /s/ Linda Mackey
Name: Linda Mackey
Title: Vice President

[Signature Page to Credit Agreement]

BANK OF AMERICA, N.A.,
as a Lender

By: /s/ David Strickert
Name: David Strickert
Title: Managing Director

[Signature Page to Credit Agreement]

Exhibit 10.17

EXECUTION VERSION

THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT, dated as of June 14, 2021 (this "**Agreement"), is among TORRID LLC, a California limited liability company (the "Lead Borrower"), the other Borrowers party hereto, Torrid Intermediate LLC, a Delaware limited liability company (f/k/a TORRID INC., a Delaware corporation, "Holdings"), the other Guarantors party hereto, Bank of America, N.A., as administrative agent and collateral agent (in such capacity, including any successor thereto, the "Agent"), and the Lenders party hereto.**

PRELIMINARY STATEMENTS

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of October 23, 2017 (as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of June 14, 2019, as amended by that certain Second Amendment to Amended and Restated Credit Agreement, dated as of September 4, 2019, and as further amended, restated, amended and restated, supplemented, and as in effect immediately prior to the effectiveness of this Agreement, the "**Existing ABL Credit Agreement**"; the Existing ABL Credit Agreement as amended by this Agreement, the "**Amended ABL Credit Agreement**"; capitalized terms used but not defined herein having the meaning provided in the Amended ABL Credit Agreement), among the Borrowers, Holdings, the other Guarantors, the Lenders from time to time party thereto and the Agent; and

WHEREAS, the Borrowers have requested an amendment to the Existing ABL Credit Agreement pursuant to which certain provisions of the Existing ABL Credit Agreement will be amended as set forth herein.

NOW, **THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendments to the Existing ABL Credit Agreement. The Existing ABL Credit Agreement is hereby amended as follows:

(a) Credit Agreement. The Existing ABL Credit Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: **double-underlined text**) as set forth in the pages of the Amended ABL Credit Agreement attached as Annex A hereto.

(b) Exhibits to Credit Agreement. Exhibit D (Form of Compliance Certificate) and Exhibit F (Form of Borrowing Base Certificate) are hereby deleted in their entirety and a new Exhibit D and Exhibit F are substituted in their stead, each as attached hereto as Annex B.

(c) Schedules to Credit Agreement. Each of the schedules to the Existing ABL Credit Agreement is hereby deleted in its entirety and substituted in its stead is each of the updated schedules attached hereto as Annex C:

2. Representations and Warranties. To induce the other parties hereto to enter into this Agreement, the Loan Parties represent and warrant to each of the Lenders party hereto and the Agent that, after giving effect to this Agreement:

(a) The execution, delivery and performance by the Loan Parties of this Agreement and the performance of each such Person's obligations hereunder have been duly authorized by all necessary corporate or other organizational action, do not and shall not: (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach, termination, or contravention of, or constitute a default under or require any payment to be made under (x) any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (y) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which it or its property is subject, except, in each case referred to in this clause (ii), to the extent that any such conflict, breach, termination, contravention, default or payment could not reasonably be expected to have a Material Adverse Effect; (iii) result in or require the creation of any Lien upon any of its assets (other than Liens in favor of the Agent under the Security Documents); or (iv) violate any applicable Law, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

(b) This Agreement has been duly executed and delivered by each of the Loan Parties. This Agreement constitutes the legal, valid and binding obligation of each Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3. Conditions Precedent. This Agreement and the amendments set forth in Section 1 of this Agreement shall become effective on the first date when the Agent shall have received each of the following, and in form and substance satisfactory to the Agent:

(a) counterparts of this Agreement, each of which shall be originals or .pdf copies or other facsimiles unless otherwise specified, duly executed and delivered by (x) the Lenders (y) the Loan Parties and (z) the Agent;

(b) a Note (which may, with respect to Lenders party to the Existing ABL Credit Agreement, take the form of an amended and restated Note), executed by the Borrowers in favor of each Lender requesting a Note (to the extent any such Note or Notes were requested on or before the date hereof);

(c) the Third Amendment Fee Letter, duly executed by the Borrowers and the Agent, and delivered to the Agent;

(d) The Third Amendment Confirmation and Ratification Agreement, duly executed by the Loan Parties and the Agent;

(e) The ABL Intercreditor Agreement, acknowledged and delivered by the Loan Parties;

(f) The Term Loan Credit Agreement, duly executed by the parties thereto;

(g) a Borrowing Base Certificate, dated as of the date hereof, executed by a Responsible Officer of the Lead Borrower, relating to the Fiscal Month ending May 31, 2021, which shall demonstrate that Availability is not less than $70,000,000;

(h) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan

Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party, and attaching copies of (or certifying no changes to since the last delivery of) each Loan Party's organizational documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of formation, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(i) a favorable opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(j) a certificate from a Responsible Officer of the Lead Borrower reasonably satisfactory in form and substance to the Agent, certifying that as of the date hereof (i) the Loan Parties, on a Consolidated basis, are Solvent, (ii) there has been no event or circumstance since February 2, 2021 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (iii) the representations and warranties made by the Loan Parties in Section 2 above are true and correct in all material respects as of the date hereof and that after giving effect to this Agreement, no Default or Event of Default shall have occurred and be continuing (which such clause (iii) representation may be included in a Revolving Loan Notice);

(k) a completed information certificate of the Loan Parties in form consistent with the information certificate delivered on the Effective Date;

(l) the Agent and the Lenders shall have received (x) all documentation and other information reasonably requested by them that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and (y) at least three (3) Business Days prior to the date hereof, any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to the Agent to be shared with any Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower; and

(m) all fees payable pursuant to the Third Amendment Fee Letter that are due and payable on the date hereof shall have been paid in full by the Borrowers in accordance with the terms thereof and all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees, charges and disbursements of counsel for the Agent) of the Agent and the Lenders in connection with this Agreement and the transactions contemplated hereby shall have been paid, to the extent invoiced.

Without limiting the generality of the provisions of Section 10.01(a) of the Amended ABL Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, this Agreement or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

4. Post-Closing Covenants.

(a) Within sixty (60) days (or such longer period as agreed by the Agent in its sole discretion) following the Third Amendment Effective Date, the Borrowers shall deliver to the Agent in form and substance satisfactory to the Agent, updated insurance certificates and endorsements as required pursuant to Section 6.07 of the Amended ABL Credit Agreement.

(b) Within thirty (30) days following the Third Amendment Effective Date, the Borrowers shall use commercially reasonable efforts to deliver to the Agent in form and substance reasonably satisfactory to the Agent, evidence that a UCC-3 amendment statement has been filed with the California Secretary of State, amending the collateral description set forth in the UCC-1 financing statement with initial filing number 18-7666728778 filed on 9/03/2018, with the Lead Borrower, as debtor, and NCR Corporation, as secured party, such that it is limited solely to the debtor's capital leases.

5. Ratification and Confirmation of Loan Documents. Except as otherwise expressly provided herein, all terms and conditions of the Existing ABL Credit Agreement and the other Loan Documents remain in full force and effect. The Loan Parties hereby ratify, confirm, and reaffirm that all representations and warranties of the Loan Parties contained in the Existing ABL Credit Agreement and each other Loan Document are true and correct in all material respects (except to the extent that any such representation and warranty is already qualified by materiality, in which case such representation and warranty shall be true and correct in all respects) on and as of the date hereof, and except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (except to the extent that any such representation and warranty is already qualified by materiality, in which case such representation and warranty shall be true and correct in all respects) as of such earlier date. The Guarantors hereby acknowledge, confirm and agree that the Guaranteed Obligations of the Guarantors under, and as defined in, the Facility Guaranty include, without limitation, all Obligations of the Loan Parties at any time and from time to time outstanding under the Existing ABL Credit Agreement and the other Loan Documents, as such Obligations have been amended pursuant to this Agreement. The Loan Parties hereby acknowledge, confirm and agree that the Security Documents and any and all Collateral previously pledged to the Agent, for the benefit of the Secured Parties, pursuant thereto, shall, except to the extent expressly released on or about the date hereof, continue to secure all applicable Obligations of the Loan Parties at any time and from time to time outstanding under the Existing ABL Credit Agreement and the other Loan Documents, as such Obligations have been amended pursuant to this Agreement.

6. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except in accordance with the Amended ABL Credit Agreement. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

7. Loan Document. This Agreement shall constitute a Loan Document for all purposes of the Amended ABL Credit Agreement and the other Loan Documents.

8. Governing Law, Etc. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. SECTIONS 10.12, 10.14 AND 10.15 OF THE AMENDED ABL CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.**

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

TORRID LLC,
as the Lead Borrower and as a Borrower

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

TORRID ADMINISTRATION, INC.
TORRID MERCHANDISING, INC.
each as a Borrower

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

TORRID INTERMEDIATE LLC,
as Holdings and as a Guarantor

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

TORRID OHIO LLC,
as a Guarantor

By: /s/ George Wehlitz
Name: George Wehlitz
Title: Chief Financial Officer

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Senior Vice President

BANK OF AMERICA, N.A.,
as a Lender, as L/C Issuer, and as Swing Line Lender

By: /s/ Matthew Potter
Name: Matthew Potter
Title: Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Brendan Hogan
Name: Brendan Hogan
Title: Assistant Vice President

Annex A

Conformed Credit Agreement

[Please see attached.]

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 23, 2017,
as amended ~~as of~~on June 14, 2019,
as amended ~~as of~~on September 4, 2019,
and as further amended on June 14, 2021

among

TORRID LLC,
as the Lead Borrower,

For

The Borrowers Named Herein,

The Guarantors Named Herein,

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent,

The Other Lenders Party Hereto

and

BANK OF AMERICA, N.A.
and
WELLS FARGO BANK, NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunning Managers

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This AMENDED AND RESTATED CREDIT AGREEMENT ("Agreement") is entered into as of October 23, 2017, as amended on June 14, 2019, as amended on September 4, 2019, and as further amended on June 14, 2021, among

TORRID LLC, a California limited liability company (the "Lead Borrower"), the Persons named on Schedule 1.01 hereto (together with the Lead Borrower, each a "Borrower" and collectively, the "Borrowers"), Torrid Intermediate LLC, a Delaware limited liability company (f/k/a TORRID INC., a Delaware corporation, ("Holdings"), and each other Guarantor (as hereinafter defined) from time to time party hereto, each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent.

The Borrowers, Holdings and the other Guarantors have entered into a Credit Agreement, dated as of May 1, 2015 (as amended and in effect, the "Existing Credit Agreement"), among such Borrowers, Holdings and the other Guarantors, the "Lenders" as defined therein, and Bank of America, N.A., as Administrative Agent and Collateral Agent.

In accordance with Section 10.01 of the Existing Credit Agreement, the parties hereto desire to amend and restate the Existing Credit Agreement as provided herein.

The Borrowers have requested that the Lenders provide a revolving credit facility in an initial aggregate maximum principal amount not to exceed $~~100,000,000~~150,000,000 , and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

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

"ABL Intercreditor Agreement" means the ABL Intercreditor Agreement among the Agent, ~~Cortland Capital Market Services LLC~~Bank of America, as agent under the Term Loan Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Lead Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"Accelerated Borrowing Base Delivery Event" means each of the following: (i) the occurrence of any Specified Event of Default, or (ii) the failure of the Borrowers to maintain Availability at least equal to the greater of (a) twelve and one-half percent (12.5%) of the Loan Cap, and (b) $~~7,500,000~~10,000,000 , in either case, for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of an Accelerated Borrowing Base Delivery Event shall be deemed continuing (i) so long as such Specified Event of Default has not been waived, and/or (ii) if the Accelerated Borrowing Base Delivery Event arises as a result of the Borrowers' failure to achieve

Availability as required hereunder, until Availability has exceeded the greater of (a) twelve and one-half percent (12.5%) of the Loan Cap, and (b) ~~$7,500,000~~10,000,000 for twenty (20) consecutive calendar days (or such shorter period as the Agent may agree in its sole discretion), in which case an Accelerated Borrowing Base Delivery Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of an Accelerated Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Accelerated Borrowing Base Delivery Event in the event that the conditions set forth in this definition again arise.

"Acceptable Document of Title" means, with respect to any Inventory of the Loan Parties which is in transit from a location outside of the United States to a location of the Loan Parties in the United States that is owned, leased or rented by a Loan Party, a non-negotiable seaway bill, airway bill or other bill of lading that (a) is issued by a common carrier which is not an Affiliate of the any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of a Loan Party or, if so requested by the Agent after the occurrence and during the continuance of an Event of Default, to the order of the Agent, and (c) is not subject to any Lien (other than in favor of the Agent and Liens described in clauses (a), (b), (e) and (o) of the definition of Permitted Encumbrances), and (d) is on terms otherwise reasonably acceptable to the Agent.

"Accommodation Payment" has the meaning provided therefor in Section 10.21(c).

"Account" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card.

"ACH" means automated clearing house transfers.

"Acquisition" means, with respect to any Person (a) an investment or a purchase of a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, in each case (a) through (c) for which the aggregate consideration payable exceeds $15,000,000 in any Fiscal Year (unless a Specified Event of Default then exists or would arise therefrom, in which case all such acquisitions regardless of amount shall be deemed an "Acquisition"), in each case in any transaction or group of transactions which are part of a common plan.

"Additional Commitment Lender" means each Person not then a Lender furnishing a Commitment and each existing Lender increasing its Commitment as provided in Section 2.15 or providing a Commitment having an Extended Maturity Date as provided in Section 2.17.

"Additional Commitment" has the meaning provided therefor in Section 2.17(c).

~~"Adjusted LIBOR Rate" means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16th of one percent (1%)) equal to the LIBOR Rate for such Interest Period multiplied by the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.~~

"Adjustment Date" means the first day of each Fiscal Quarter, commencing with the first Fiscal Quarter to occur three months following the Third Amendment Effective Date.

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

"Affected Financial Institution" means any EEA Financial Institution or UK Financial Institution.

"Affiliate" means, with respect to any Person, (a) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (b) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (c) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (d) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person.

"Agent" means Bank of America in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor thereto.

"Agent Parties" has the meaning provided therefor in Section 10.02(c).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Aggregate Commitments" means the sum of the Commitments. As of the Third Amendment Effective Date, the Aggregate Commitments are $~~70,000,000~~150,000,000.

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning provided therefor in Section 10.21(d).

"Applicable Lenders" means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" means:

(a) from and after the Third Amendment Effective Date until the first Adjustment Date, the percentages set forth in Level II of the pricing grid below; and

(b) from and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Average Daily Availability as of the Fiscal Quarter ended immediately preceding such Adjustment Date; provided that if any financial statements or any Borrowing Base Certificates are at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in such financial statements or any Borrowing Base Certificates otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately and retroactively recalculated at such higher rate for any applicable periods and shall be due and payable on demand (after netting out, during the same relevant period solely to the extent that

such period is not more than two Fiscal Quarters prior to the relevant date of adjustment, any payments of interest and fees paid during such period which have been determined to have been in excess of what was owed by the Borrowers as a result of a proper calculation of the Average Daily Availability that would have resulted in lower pricing for such period).

Level	Average Daily Availability	LIBOR Margin for Revolving Loans	Base Rate Margin for Revolving Loans
I	Greater than or equal to 67% of the Aggregate Commitments	1.25%	0.25%
II	Less than 67% of the Aggregate Commitments but greater than or equal to 33% of the Aggregate Commitments	1.50%	0.50%
III	Less than 33% of the Aggregate Commitments	1.75%	0.75%

"Applicable Percentage" means, with respect to all of the Obligations (excluding Other Liabilities) due to any Lender at any time, the percentage (carried out to the ninth decimal place) resulting from dividing (x) such Lender's Commitment at such time (or if the commitments of each Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Commitments have expired, then the sum of the outstanding principal balance of the Revolving Loans owing to such Lender plus the outstanding L/C Obligations owing to such Lender at such time), by (y) the Aggregate Commitments (or if the commitments of each Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Commitments have expired, then the Total Outstandings as of such time). The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, at any time of calculation, (a) with respect to Commercial Letters of Credit, a per annum rate equal to fifty percent (50%) of the Applicable Margin for LIBOR Rate Loans, and (b) with respect to Standby Letters of Credit, a per annum rate equal to the Applicable Margin for LIBOR Rate Loans.

"Appraised Value" means, with respect to Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Inventory as set forth in the inventory stock ledger of the Borrowers, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Arranger" means Bank of America and Wells Fargo, in their capacities as joint lead arrangers.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation of any Person, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Auto-Extension Letter of Credit" has the meaning provided therefor in Section 2.03(b)(iii).

"Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) Loan Cap

minus

(b) The Total Outstandings.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the Commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any of the factors taken into account in determining the Appraised Value, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral or the amount that the Agent would likely receive upon the Liquidation of the Collateral, (b) to reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, (d) to reflect any other circumstances which would likely adversely affect the value of the Collateral, or (e) to reflect any circumstances which adversely affect the enforceability or priority of the Agent's Liens

on the Collateral. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) reserves based on: (i) rent; (ii) with respect to Eligible In-Transit Inventory, customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which may have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party; provided that no Availability Reserves on account of such salaries, wages and benefits shall be imposed unless a Cash Dominion Event has occurred and is continuing, (v) Customer Credit Liabilities, (vi) customer deposits, (viii) reserves for reasonably anticipated changes in the Appraised Value between appraisals, (viii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral, (ix) Cash Management Reserves, and (x) Bank Products Reserves; provided that no Bank Products Reserves on account of liabilities and obligations of the Loan Parties in respect of Swap Contracts owing to a Credit Party shall be imposed unless Availability is less than twenty-five percent (25%) of the Borrowing Base. Upon the determination by the Agent, in its Permitted Discretion, that an Availability Reserve should be established or modified, the Agent shall notify the Lead Borrower, to the extent required hereunder. The amount of any Availability Reserve established by the Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by the Agent in its Permitted Discretion.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then -current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

"Average Daily Availability" shall mean the average daily Availability for the immediately preceding Fiscal Quarter.

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

"Bail-In Legislation" means~~,~~ with respect to (a) any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, or (b) the United Kingdom, Part I of the United Kingdom Banking Act 2009 and any other law 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 of America" means Bank of America, N.A. and its successors.

"Bank Products" means any services or facilities provided to any Loan Party or any Restricted Subsidiary thereof by the Agent, any Lender, or any of their respective Affiliates, including, without limitation, on account of (a) Swap Contracts, (b) leasing, and (c) supply chain finance services (including, without limitation, trade payable services and supplier accounts receivable purchases), but excluding Cash Management Services.

"Bank Product Reserves" means such reserves as the Agent from time to time determine in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," ~~; (b) the Federal Funds Rate for such day, plus 0.50%;~~ and (c) the LIBOR Rate ~~for a one month interest period as determined on such day,~~ plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America ~~'s prime rate, the Federal Funds Rate or the LIBOR Rate, respectively,~~ shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Benchmark" means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

(1) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months' duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);

provided that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Agent determines that Term SOFR has become available and is administratively feasible for the Agent in its sole discretion, and the Agent notifies the Lead Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

(2) For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Agent and the Lead Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Agent.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Transition Event" means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

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

"Blocked Account" has the meaning provided therefor in Section 6.12(a)(ii).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Agent, establishing control (as defined in the UCC) of such account by the Agent and whereby the Blocked Account Bank agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

"Blocked Account Bank" means each bank or other financial institution with whom deposit accounts, securities accounts or commodities accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated or proceeds of Collateral are maintained and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof or the Security Agreement.

"Board of Directors" means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of Holdings or the Borrower, as the context may require.

"Bookrunning Manager" means Bank of America and Wells Fargo, in their capacities as joint bookrunning manager.

"Borrower Materials" has the meaning provided therefor in Section 6.02.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a Revolving Borrowing or a Swing Line Borrowing, as the context may require.

"Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by 90%;

plus

(b) the Cost of Eligible Inventory, net of Inventory Reserves, *multiplied by* 90% (provided that, during the Seasonal Overadvance Period, such advance rate shall be increased by the Seasonal Advance Rate Increase Percentage), *multiplied by* the Appraised Value of such Eligible Inventory;

plus

(c) subject to the last proviso of this definition below, the Cost of Eligible In-Transit Inventory, net of Inventory Reserves, *multiplied by* 90% (provided that, during the Seasonal Overadvance Period, such advance rate shall be increased by the Seasonal Advance Rate Increase Percentage), *multiplied by* the Appraised Value of such Eligible In-Transit Inventory;

minus

(d) the amount of all Availability Reserves at such time;

provided that in no event shall the amounts available to be borrowed against Eligible In-Transit Inventory hereunder exceed the In-Transit Cap.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete in all material respects by a Responsible Officer of the Lead Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent's Office is located and, if such day relates to any LIBOR Rate Loan, means any such day ~~on which dealings in Dollar deposits are conducted by and between banks in the~~that is also a London ~~interbank market~~Banking Day.

"Capital Expenditures" means, with respect to any Person for any period, all expenditures paid in cash, in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, provided that "Capital Expenditures" shall not include (a) any additions, replacements, restorations or substitutions to property, plant and equipment and other capital expenditures made with (i) the proceeds from any Permitted Disposition, to the extent that the proceeds therefrom are utilized (or are contractually committed to be utilized) for capital expenditures within twelve (12) months of the receipt of such proceeds, (ii) proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Loan Parties, or (iii) the proceeds of any Equity Interests issued or capital contributions received by any Loan Party or any Restricted Subsidiary in connection with such capital expenditures, or (b) any expenditures that are (i) accounted for as capital expenditures of such person and that actually are paid for by a third party (excluding Holdings, the Borrowers or any Subsidiary thereof) and for which neither Holdings, the Borrowers nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period) or (ii) financed with tenant improvement allowances (or similar real estate incentive programs), (c) interest capitalized during such period, (d) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business, (e) Investments in respect of a Permitted Acquisition.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Capital Stock" means:

1. in the case of a corporation or exempted company, corporate stock or shares in the capital of such corporation or exempted company;

2. in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

3. in the case of a partnership, exempted limited partnership or limited liability company, partnership or membership interests (whether general or limited); and

4. any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Cash Collateral Account" means a non-interest bearing account established by one or more of the Loan Parties with Bank of America, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(g) or 8.02(c).

"Cash Collateralize" means to deposit in the Cash Collateral Account or to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the Agent, the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Dominion Event" means either (a) the occurrence and continuance of any Specified Event of Default, or (b) the failure of the Borrowers to maintain Availability of at least the greater of (i) twelve and one-half percent (12.5%) of the Loan Cap, and (ii) $~~7,500,000~~10,000,000 , in either case, for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing at the Agent's option (a) so long as such Specified Event of Default has not been waived, and/or (b) if the Cash Dominion Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Availability has exceeded the greater of (i) twelve and one-half percent (12.5%) of the Loan Cap, and (ii) $~~7,500,000~~10,000,000 for twenty (20) consecutive calendar days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement.

"Cash Equivalents" means any of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into; and

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above.

"Cash Management Reserves " means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any cash management services or facilities provided to any Loan Party or any Restricted Subsidiary thereof by the Agent or any Lender or any of their respective Affiliates, including, without limitation, (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services, (d) foreign exchange facilities, (e) purchase cards and (f) credit or debit card services.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority requiring compliance by any of the Agent, any Lender, any L/C Issuer or the Swing Line Lender (or any lending office of such Person or

by such Person's holding company, if any); provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) at any time prior to the ~~creation~~consummation of a ~~Public Market~~Qualifying IPO, the Permitted Holders shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in Holdings representing more than 50% of the combined voting power of all of Equity Interests entitled to vote for members of the ~~board~~Board of ~~directors~~Directors or equivalent governing body of Holdings on a fully-diluted basis unless the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise, to elect or designate for election at least a majority of the ~~board~~Board of ~~directors~~Directors of the Holdings; or

(b) at any time after the ~~creation~~consummation of a ~~Public Market~~Qualifying IPO, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the ~~Securities~~ Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the ~~Securities~~ Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of (x) ~~35~~forty percent (40%) or more of the Equity Interests of Holdings entitled to vote for members of the ~~board~~Board of ~~directors~~Directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right), or (y) a percentage that is greater than the percentage of the Equity Interests of Holdings entitled to vote for members of the ~~board~~Board of ~~directors~~Directors or equivalent governing body of Holdings that is then beneficially owned by the Permitted Holders; unless, in the case of either clause (x) or (y) above, the Permitted Holders have, at such time and at all times thereafter, the right or the ability by voting power, contract or otherwise, to elect or designate for election at least a majority of the ~~board~~Board of ~~directors~~Directors of Holdings.

"Closing Date" means ~~the closing date of the Existing Credit Agreement, which date is~~ May 1, 2015.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) any landlord of Real Estate leased by any Loan Party, pursuant to which each such Person described in clauses (a) or (b), as applicable, (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with reasonable access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Collection Account" has the meaning provided therefor in Section 6.12(c).

"Commercial Letter of Credit" means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

"Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commitment Fee" has the meaning provided therefor in Section 2.09.

"Commitment Fee Percentage" means, with respect to each Fiscal Quarter, (a) if the average daily Total Outstandings for the immediately preceding Fiscal Quarter are greater than 50% of the Aggregate Commitments, 0.25% per annum, or (b) if the average daily Total Outstandings for the immediately preceding Fiscal Quarter are less than or equal to 50% of the Aggregate Commitments, 0.375% per annum.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.)

"Communication" has the meaning specified in Section 10.24(b).

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

"Confirmation and Ratification Agreement" means that certain Confirmation and Ratification Agreement dated as of the Effective Date by and among the Loan Parties and the Agent.

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

"Consent" means actual consent given by a Lender from whom such consent is sought; provided that after the passage of ten (10) Business Days from receipt of written notice to a Lender from the Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender's consent or objection to such course of action, such Lender shall be deemed to have withheld consent to such action.

"Consolidated" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis for the most recently completed Measurement Period, plus, without duplication~~,~~:

(a) the following to the extent deducted in calculating such Consolidated Net Income:

(i) Consolidated Interest Charges,

(ii) the provision for Federal, state, local and foreign income Taxes,

(iii) depreciation and amortization expense,

(iv) non-cash charges and non-cash items for stock-based compensation or other non-cash equity based awards paid to officers, directors or employees,

(v) management and transaction fees and expenses paid to Sponsor or its Affiliates to the extent permitted under Section 7.09(e),

(vi) non-recurring expenses reducing such Consolidated Net Income in connection with

(A) pension liabilities, and (B) tax payments payable in accordance with Accounting Standards Codification 740-10,

(vii) non-recurring restructuring expenses reducing such Consolidated Net Income in an aggregate amount not to exceed $3,000,000 for such Measurement Period,

(viii) any reasonable fees, expenses or charges related to any issuance of Equity Interests (including pursuant to a ~~Public Offering~~Qualifying IPO) or the incurrence or repayment of Indebtedness permitted to be incurred hereunder, including a Permitted Refinancing thereof,

(ix) [reserved];

(x) [reserved],

(xi) reasonable cash expenses or cash charges arising from or relating to Permitted Store Closings in an aggregate amount not to exceed $2,500,000 for such Measurement Period,

(xii) any other non-cash expenses, charges, expenses, losses or items (including any write-offs or write-downs) reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Lead Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Lead Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period),

(xiii) reasonable fees, costs and expenses incurred in connection with the Transactions and the Third Amendment Effective Date Distribution,

(xiv) the amount of any proceeds from business interruption insurance received during such period, to the extent the associated losses arise out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing such Consolidated Net Income ~~and~~ ,

(xv) reasonable fees, costs and expenses in connection with any amendments, consents or waivers under the Loan Documents or with respect to any Permitted Acquisition (whether or not consummated),

(xvi) pro forma adjustments, including pro forma "run rate" cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to acquisitions, dispositions and other specified transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and projected by the Lead Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within four fiscal quarters after the date of consummation of such acquisition, disposition or other specified transaction or the initiation of such restructuring initiative, cost savings initiative or other initiatives (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken); provided that amounts added back pursuant to this clause (xvi), together with amounts added back pursuant to clauses (xvii) and (xviii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis provided further that such cap shall not apply to adjustments made in accordance with Regulation S-X,

(xvii) costs, charges, reserves and expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other synergies and similar initiatives and business optimization and other restructuring and integration charges, provided that amounts added back pursuant to this clause (xvii), together with amounts added back pursuant to clauses (xvi) and (xviii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis,

(xviii) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period, provided that amounts added back pursuant to this clause (xviii), together with amounts added back pursuant to clauses (xvi) and (xvii), shall not exceed the greater of (x) $15,000,000 and (y) 20% of Consolidated EBITDA for such period calculated prior to giving effect to such add-backs and being calculated on a pro forma basis, and

(ixx) reasonable fees, costs and expenses incurred in connection with any debt financing transaction or ~~initial public offering~~Qualifying IPO, (in each case for the items described in this clause (a), of or by Lead Borrower and its Restricted Subsidiaries for such Measurement Period), minus

(b) the following to the extent included in calculating such Consolidated Net Income:

(i) Federal, state, local and foreign income tax credits and

(ii) all non-cash items increasing Consolidated Net Income which do not represent a cash item in such period or any future period (in each case for the items described in this clause (b), of or by the Lead Borrower and its Subsidiaries for such Measurement Period), all as determined on a Consolidated basis in accordance with GAAP.

For clarity, to the extent Restricted Payments made to Holdings pursuant to Sections 7.06(c) and 7.06(d) hereof are not deducted by the Lead Borrower in the determination of Consolidated Net Income, such amounts may not be utilized to increase Consolidated Net Income for the purposes of calculating Consolidated EBITDA (notwithstanding that the payments made under Sections 7.06(c) and 7.06(d) are of the type described in clause (a) of this definition).

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a)(i) Consolidated EBITDA for the most recently completed Measurement Period minus (ii) Capital Expenditures paid in cash during such period (other than Financed Capital Expenditures), minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash during such period (but not less than zero) to (b) Debt Service Charges, of or by the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Interest Charges" means, for any Measurement Period, the sum, without duplication, of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs and net of interest income, and (b) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP, in each case of or by the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, as of any date of determination, the net income of the Lead Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP, provided, however, that there shall be excluded, without duplication, :

(a) extraordinary gains and extraordinary losses for such Measurement Period,

(b) the income (or loss) of any Restricted Subsidiary during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to the Lead Borrower or another Loan Party during such period,

(c) the income (or loss) of such Restricted Subsidiary during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Lead Borrower or any of its Restricted Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Restricted Subsidiaries or that Person's assets are acquired by the Lead Borrower or any of its Restricted Subsidiaries,

(d) the income of any direct or indirect Restricted Subsidiary of the Lead Borrower to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary, except that the Lead Borrower's equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, ~~and~~

(e) the cumulative effect of any change in accounting principles, including any increase in amortization or depreciation, any adjustments to inventory basis or rent expenses or any one-time charges resulting from purchase accounting in connection with any Permitted Acquisition; and

(f) Public Company Costs (including any costs and expense of any directors of any Parent Company following a Qualifying IPO).

"Consolidated Total Debt" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrowers and their Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with any Permitted Acquisition), consisting of Indebtedness described in clauses (a), (b) and (c) of the definition thereof minus (b) without duplication, the aggregate amount of all cash and Cash Equivalents included in the consolidated balance sheet of the Borrowers and their Restricted Subsidiaries as of such date that are not listed as "restricted" for purposes of GAAP, which aggregate amount of cash and Cash Equivalents shall be determined without giving pro forma effect to the proceeds of Indebtedness incurred on such date; provided that, Consolidated Total Debt will not include Indebtedness that is non-recourse to the Borrowers and the Restricted Subsidiaries and Indebtedness in respect of any (1) letter of credit, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Swap Obligations, except any unpaid termination payments thereunder. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Swap Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Investment Affiliate" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

"Convert", "Conversion" and "Converted" each refers to a conversion of Revolving Loans of one Type into Revolving Loans of the other Type.

"Cost" means the lower of cost or market value of Inventory, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger. "Cost" does not include inventory capitalization costs used in the Borrowers' calculation of cost of goods sold.

"Covenant Compliance Event" means the failure of the Borrowers to maintain Specified Availability of at least the greater of (i) ten percent (10%) of the Loan Cap, and (ii) $~~5,000,000~~7,000,000 . For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing if the Covenant Compliance Event arises as a result of the Borrowers' failure to achieve Availability as required hereunder, until Specified Availability has exceeded the greater of (i) ten percent (10%) of the Loan Cap, and (ii) $~~5,000,000~~7,000,000 for twenty (20) consecutive calendar days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified in Section 10.27.

"Credit Card Issuer" shall mean any person (other than a Borrower, another Loan Party or Restricted Subsidiary thereof) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, JCB, and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Alliance Data Systems Corporation and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary (including, without limitation, Alliance Data Systems Corporation) who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Notifications" has the meaning provided therefor in Section 6.12(a)(i).

"Credit Card Receivables" means each "payment intangible" (as defined in the UCC) together with all income, royalties, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party or otherwise relating to credit or debit cards or related services, in each case in the ordinary course of its business.

"Credit Extensions" mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) each L/C Issuer, (iv) the Arranger and the Bookrunning Manager, (v) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (vi) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vii) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means (a) all reasonable and documented out-of-pocket expenses incurred by the Agent~~, MLPFS~~ and ~~their respective~~its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent ~~and MLPFS,~~ (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examiners, and (E) all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (F) environmental site assessments, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of the Credit Parties' rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral or in connection with any proceeding under any Debtor Relief Laws, or (D) any workout, restructuring or negotiations in respect of any Obligations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer and its Affiliates in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable and documented out-of-pocket expenses incurred by the Credit Parties who are not the Agent, ~~MLPFS,~~ the L/C Issuer or any Affiliate of any of them, including in the course of any work-out or restructuring of the Loans or other Obligations during the pendency, after the occurrence and during the continuance of any Event of Default, provided that, such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

"Cure Amount" has the meaning specified in Section 8.04(1).

"Cure Deadline" has the meaning specified in Section 8.04(1).

"Cure Right" has the meaning specified in Section 8.04(1).

"Customer Credit Liabilities" means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits of the Borrowers.

"Customs Broker/Carrier Agreement" means an agreement in form and substance reasonably satisfactory to the Agent among a Loan Party, a customs broker, freight forwarder, consolidator, or other carrier, and the Agent, in which the customs broker, freight forwarder, consolidator, or other carrier

acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory and other property solely as directed by the Agent; it being agreed that the Agent shall only give such notice after the occurrence and during the continuance of an Event of Default.

"Daily Simple SOFR" with respect to any applicable determination date means the secured overnight financing rate ("SOFR") published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source).

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"Debt Service Charges" means for any Measurement Period, the sum of (a) Consolidated Interest Charges paid in cash or required to be paid in cash in respect of debt for borrowed money (including Capital Lease Obligations) for such Measurement Period (excluding all upfront and closing fees paid on the Closing Date, the Effective Date and the ~~Third Amendment~~ Effective Date under, or in connection with, this Agreement), plus (b) scheduled principal payments paid in cash or required to be paid in cash on account of Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Consolidated basis in accordance with GAAP.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the then Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus two percent (2%) per annum, and (c) with respect to all other Obligations (excluding Other Liabilities), an interest rate equal to the Base Rate, plus the then Applicable Margin for Base Rate Loans, plus two percent (2%) per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two (2) Business Days of the date when due, (b) has notified the Lead Borrower, the Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by the Agent or the Lead Borrower, to

confirm in writing to the Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had 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, 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; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Lead Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of comprehensive Sanctions, at the time of this Agreement including Cuba, Iran, North Korea, Sudan, Syria, or the Crimea region of Ukraine.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by the Borrowers or a Restricted Subsidiary in connection with a Disposition that is so designated as Designated Non-Cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on such Designated Non-Cash Consideration.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise, of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Lender" means (a) any competitor of Holdings or the Lead Borrower or its Subsidiaries identified by or on behalf of the Lead Borrower or the Sponsor to (i) the Arrangers from time to time on or prior to the Effective Date or (ii) the Agent from time to time after the Effective Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by or on behalf of the Lead Borrower or the Sponsor to the Arrangers prior to the Effective Date and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) (excluding, in the case of clause (a), bona fide debt funds) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Lead Borrower or the Sponsor to (i) the Arrangers on or prior to the Effective Date or (ii) the Agent from time to time after the Effective Date; it being understood and agreed that the identification of any Person as a Disqualified Lender after the Effective Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan until such time such Person no longer constitutes a Lender. The identity of Disqualified Lenders shall be made available upon request, but not posted or distributed, to all Lenders and prospective assignees.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the Latest Maturity Date; provided, however, that (a) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock, (b) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by Holdings or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, resignation, death or disability, and (c) if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder solely by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Holdings and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"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.

"Dollars" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States, any State thereof or the District of Columbia (excluding, for the avoidance of doubt, any Subsidiary organized under the laws of Puerto Rico or any other territory).

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) 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.

"Early Opt-in Election" means the occurrence of:

(1) a determination by the Agent, or a notification by the Lead Borrower to the Agent that the Lead Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(2) the joint election by the Agent and the Lead Borrower to replace LIBOR with a Benchmark Replacement and the provision by the 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 clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means ~~the first date all the conditions precedent~~October 23, 2017.

"Electronic Copy" has the meaning specified in Section ~~4.01 are satisfied or waived in accordance with~~10.24(b).

"Electronic Record" has the meaning specified in Section ~~10.01~~10.24.

"Electronic Signature" has the meaning specified in Section 10.24.

"Eligible Assignee" means (a) a Lender or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities; and (e) any other Person (other than a natural Person) satisfying the requirements of Section 10.06(b) hereof; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include a Disqualified Lender, a Permitted Holder, a Loan Party or any of their respective Affiliates or Subsidiaries.

"Eligible Credit Card Receivables" means at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Borrower from a Credit Card Issuer or Credit Card Processor, and in each case is originated in the ordinary course of business of such Borrower, and (ii) in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (i) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the

extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent in its Permitted Discretion, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivables which do not constitute a "payment intangible" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

(c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Agent, or (ii) with respect to which a Borrower does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which a Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or a Credit Card Processor of the applicable credit card which (i) is the subject of any ~~bankruptcy or insolvency proceedings~~proceeding under any Debtor Relief Law or (ii) is a target of Sanctions;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or a Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables; or

(i) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection or which do not meet such other reasonable eligibility criteria for Credit Card Receivables as the Agent may determine in its Permitted Discretion.

"Eligible In-Transit Inventory" means, as of any date of determination thereof, without duplication of other Eligible Inventory, In-Transit Inventory:

(a) which has been received in a foreign location by a freight forwarder as consolidator acting on behalf of, and as agent for, a Borrower and which has been shipped from a foreign location for receipt by a Borrower, but which has not yet been delivered to such Borrower, which In-Transit Inventory is scheduled for delivery within fifty (50) days or less from the date of determination with respect to Inventory;

(b) for which the purchase order is in the name of a Borrower and title and risk of loss has passed to such Borrower;

(c) for which an Acceptable Document of Title has been issued, and in each case as to which the Agent has control (as defined in the UCC) over the documents of title which evidence ownership of the subject Inventory (including by the delivery of a Customs Broker/Carrier Agreement or as otherwise agreed by the Agent in its Permitted Discretion);

(d) which is insured to the reasonable satisfaction of the Agent (including, without limitation, pursuant to marine cargo insurance and/or stock throughput insurance);

(e) for which either payment of the purchase price has been made by a Borrower, the purchase price is supported by a Commercial Letter of Credit or the purchase price is on terms consistent with past practices of such Borrower and not overdue; and

(f) which otherwise would constitute Eligible Inventory;

provided that the Agent may, in its Permitted Discretion, either establish an Inventory Reserve or exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event the Agent reasonably determines that such Inventory is subject to any Person's right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise materially adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of Inventory of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowers' business deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Agent, (i) comply in all material respects with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (ii) are not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents, or any other Permitted Encumbrance described in clauses (a), (b), (e), and (o) of such definition);

(b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Loan Party;

(c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States (excluding territories or possessions of the United States) or Puerto Rico;

(d) Inventory that is not located at a location that is owned or leased by a Borrower, except (i) Inventory in transit between such owned or leased locations, or (ii) to the extent that the Borrowers have furnished the Agent with (A) any UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location;

(e) Inventory that is located in a distribution center, warehouse or other bailee location leased by a Borrower unless the applicable lessor has delivered to the Agent a Collateral Access Agreement or the Agent has waived such requirement in writing in its Permitted Discretion;

(f) without duplication of any of the factors taken into account in determining Appraised Value, Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

(g) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances described in clauses (a), (b), (e) or (o) of such definition);

(h) Inventory that is not insured in compliance with the provisions of Section 5.09 hereof;

(i) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(j) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party as to which any Borrower or any of its Subsidiaries has received notice from such third party of a dispute in respect of any such agreement or a breach of any such agreement; or

(k) Inventory acquired in a Permitted Acquisition or which is not of the type usually sold in the ordinary course of the Borrowers' business, unless and until the Agent has completed or received (A) an appraisal of such Inventory from appraisers reasonably satisfactory to the Agent and establishes Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (B) such other due diligence as the Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Agent.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any Hazardous Materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the UCC and shall also mean all furniture, store fixtures, motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Loan Party's business, and any and all accessions or additions thereto, and substitutions therefor.

"Equity Interests" means, with respect to any Person, all of the shares of ~~capital stock~~Capital Stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of ~~capital stock~~Capital Stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of ~~capital stock~~Capital Stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan, other than those disclosed on Schedule 5.11 as of the Third Amendment Effective Date; (b) the withdrawal of any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan or Multiemployer Plan, or the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan or Multiemployer Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a Multiemployer Plan is in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA (other than with respect to contributions not yet due), other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

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

"Event of Default" has the meaning provided therefor in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Accounts" means any payroll, employee benefits, workers compensation, trust and tax withholding accounts funded by the Loan Parties in the ordinary course of business.

"Excluded Contribution" means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and

(3) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock) of the Borrower.

"Excluded Subsidiary" means any Foreign Subsidiary, any Foreign Subsidiary Holding Company, any Immaterial Subsidiary and any Unrestricted Subsidiary.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 10.25 and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or security interest becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment (or other interest) pursuant to a law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Lead Borrower under Section 10.13) or (ii) such Recipient changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e), (d) any U.S. federal withholding Taxes imposed pursuant to FATCA, and (e) any back-up withholding Taxes.

"Executive Order" has the meaning provided therefor in Section 10.18.

"Existing Credit Agreement" has the meaning given to such term in the introductory paragraph to this Agreement.

~~"Existing Letters of Credit" means those certain Letters of Credit issued and outstanding as of the Effective Date pursuant to the Existing Credit Agreement, as more fully described on Schedule 1.03 hereto.~~

"Expected Cure Amount" has the meaning specified in Section 8.04(2).

"Extended Maturity Date" means the date that each of the Agent, the Lead Borrower and each Extending Lender agree in accordance with Section 2.17.

"Extended Commitments" has the meaning provided therefor in Section 2.17(a).

"Extending Lender" has the meaning provided therefor in Section 2.17(b).

"Extension Amendment" has the meaning provided therefor in Section 2.17(d).

"Extension Election" has the meaning provided therefor in Section 2.17(b).

"Extension Request" has the meaning provided therefor in Section 2.17(a).

"Extension Series" has the meaning provided therefor in Section 2.17(a).

"Facility Guaranty" means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any applicable intergovernmental agreements that implement any of the foregoing, and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum ~~equal to~~calculated by the ~~weighted average of the rates on overnight Federal~~Federal Reserve Bank of New York based on such day's federal funds transactions ~~with members of~~ by depository institutions (as determined in such manner as the Federal Reserve ~~System arranged by Federal funds brokers on such day, as~~Bank of New York shall set forth on its public website from time to time) and published ~~by~~on the ~~Federal Reserve Bank of New York on the Business Day~~ next succeeding ~~such day~~Business Day by the Federal Reserve Bank of New York as the federal funds effective rate ; provided that ~~(a)~~ if ~~such day is not a Business Day,~~ the Federal Funds Rate ~~for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for~~as so determined would be less than zero, such ~~day~~rate shall be ~~the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent~~deemed to be zero for purposes of this Agreement.

"Fee ~~Letter~~Letters " means, collectively, (i) the Fee Letter, dated October 23, 2017, among the Borrowers and the Agent, and ~~acknowledged by MLPFS~~(ii) the Third Amendment Fee Letter, in each case, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"FILO Tranche" has the meaning specified in Section 2.15(f).

"Financed Capital Expenditures" shall mean, with respect to any Person and for any period, Capital Expenditures made by such Person during such period that are financed with the proceeds of Indebtedness (other than Credit Extensions) or net proceeds of any Disposition, net proceeds of any casualty event, any incurrence of Indebtedness (other than Credit Extensions) or any issuance of Equity Interests (other than Disqualified Stock or any other issuance of Equity Interests which increases any available basket hereunder).

"Financial Covenant" means the covenant specified in Section 7.15.

~~"First Amendment Effective Date" means June 14, 2019.~~

"Fiscal Month" means each monthly accounting period of the Lead Borrower calculated in accordance with the National Retail Federation calendar.

"Fiscal Quarter" means each quarterly accounting period of the Lead Borrower consisting of successive 13-week periods (each such 13 week period to begin on a Sunday and end on a Saturday) of the Lead Borrower of any Fiscal Year; provided that for any 53-week Fiscal Year, the last Fiscal Quarter of such Fiscal Year shall consist of the successive 14-week period from and including the first day after the third Fiscal Quarter of such Fiscal Year through and including the last day of such Fiscal Year.

"Fiscal Year" means the annual accounting period of ~~Borrowers~~the Lead Borrower ending on the Saturday nearest to January 31st in each calendar year.

"Foreign ~~Asset~~Assets Control Regulations" has the meaning provided therefor in Section 10.18.

"Foreign Lender" means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means any Subsidiary that is (i) a CFC, or (ii) a direct or indirect Subsidiary of a CFC.

"Foreign Subsidiary Holding Company" means any Subsidiary, substantially all of the assets of which are Equity interests of one or more Foreign Subsidiaries.

"Foreign Vendor" means a Person that sells In-Transit Inventory to a Borrower.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien), provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. Notwithstanding the foregoing, "Guarantee" shall not include liabilities for indemnities under laws, contracts, arrangements and agreements incurred in the ordinary course of business (including liabilities for director, officer, employee and agent indemnification obligations). The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means, collectively, (a) Holdings and each Subsidiary of Holdings (other than any Excluded Subsidiary) existing on the Closing Date and each other Subsidiary of Holdings that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11, and (b) with respect to Other Liabilities owing by any Loan Party or any of its Restricted Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Section 1 of the Facility Guaranty and Section 10.25 hereof) under the Facility Guaranty, each Borrower.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holdings"~~means Torrid Inc., a Delaware corporation, and the owner of 100% of the issued and outstanding Equity Interests in the Lead Borrower~~has the meaning specified in the introductory paragraph hereto.

"Honor Date" has the meaning provided therefor in Section 2.03(c)(i).

"Hot Topic Tri-Party Agreement" means that certain Agreement dated as of the Closing Date by and among the Loan Parties, Hot Topic, Inc. and certain of its Affiliates, and the Agent, as confirmed and ratified pursuant to the Confirmation and Ratification Agreement and the Third Amendment Confirmation and Ratification Agreement.

"Immaterial Subsidiary" means, on any date, any Subsidiary of Holdings that is not a Material Domestic Subsidiary or Material Foreign Subsidiary.

"Immediate Family Members" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"Impacted Loans" has the meaning specified in Section 3.03(a).

"Increase Effective Date" has the meaning provided therefor in Section 2.15(d).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business not past due for more than ninety (90) days after the date on which such trade account payables were created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided that, other than for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, if such Person has not assumed or otherwise become liable for such indebtedness, such indebtedness shall be measured at the fair market value of such property securing such indebtedness at the time of determination;

(f) all Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person prior to the date that is 91 days after the ~~scheduled~~Latest Maturity Date (including, without limitation, Disqualified Stock but excluding any tax distributions required to be made with respect to entities that are treated as partnerships or disregarded entities for federal income tax purposes), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitees" has the meaning provided therefor in Section 10.04(b).

"Independent Assets or Operations" means, with respect to any Parent Company, that Parent Company's' total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Lead Borrower and its Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

"Information" has the meaning provided therefor in Section 10.07.

"Initial Maturity Date" has the meaning provided therefor in the definition of "Maturity Date".

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

~~"Intercompany Subordinated Indebtedness" means that certain Subordinated Indebtedness in the aggregate principal amount of $45,000,000 pursuant to that certain promissory note dated as of the Closing Date, made by Holdings in favor of Torrid Holding LLC, a Delaware limited liability company ("TopCo"), which Indebtedness is subordinated to the Obligations pursuant to the Intercompany Subordination Agreement.~~

~~"Intercompany Subordination Agreement" means that certain Subordination Agreement dated as of the Closing Date, by and among the Loan Parties and TopCo and acknowledged by the Agent, as confirmed and ratified pursuant to the Confirmation and Ratification Agreement.~~

"Interest Payment Date" means, (a) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first ~~Business Day~~calendar day of each month and the Maturity Date.

"Interest Period" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or Converted to or continued as a LIBOR Rate Loan and ending on the date one, three or six (or, to the extent available to all Lenders, twelve) months thereafter, as selected by the Lead Borrower in its Revolving Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period shall extend beyond the Maturity Date; and

(iv) notwithstanding the provisions of clause (iii), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBOR Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent Conversion or continuation of such Borrowing.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Lead Borrower's and/or its Subsidiaries' internal controls over financial reporting.

"In-Transit Cap" means twenty percent (20%) of the Borrowing Base (calculated without inclusion of amounts described in clause (d) of the definition thereof).

"In-Transit Inventory" means Inventory of a Borrower which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrower from a location outside of the continental United States to a location of a Borrower that is within the continental United States.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any of the factors taken into account in determining "Appraised Value", such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

(a) obsolescence;

(b) seasonality;

(c) Shrink;

(d) imbalance;

(e) change in Inventory character;

(f) change in Inventory composition;

(g) change in Inventory mix;

(h) mark-downs (both permanent and point of sale); and

(i) retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events.

Upon the determination by any Agent, in its Permitted Discretion, that an Inventory Reserve should be established or modified, such Agent shall notify the Lead Borrower to the extent required hereunder.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investors" means (a) the Sponsor and (b) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"IPO Entity" means, at any time upon and after a Qualifying IPO, Holdings or any Parent Company, the Equity Interests of which were issued or otherwise sold pursuant to such Qualifying IPO; *provided* that, immediately following such Qualifying IPO, the Lead Borrower is a direct or indirect wholly owned Subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Lead Borrower immediately prior to such Qualifying IPO.

"IPO Reorganization Transaction" means any re-organization or other similar activities among any Parent Company, Holdings, the Lead Borrower and the Restricted Subsidiaries in connection with and reasonably related to consummating a Qualifying IPO, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with Section 6.11, (b) taken as a whole, the value of the Collateral securing the Obligations and the Guarantees by the Guarantors of the Obligations are not materially reduced or impaired and (c) the Liens in favor of the Agent for the benefit of the Credit Parties under the Security Documents are not materially impaired.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and any Borrower (or any other Loan Party) or in favor the L/C Issuer and relating to any such Letter of Credit.

"Joinder Agreement" means an agreement, in form reasonably satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may reasonably determine.

"Junior Indebtedness" means any Indebtedness for borrowed money of any Loan Party in an amount greater than $10,000,000 that is unsecured or secured on the Collateral on a junior basis to the Liens securing the Obligations of such Loan Party arising under the Loan Documents. For the avoidance of doubt, the Term Loan Facility shall not constitute Junior Indebtedness.

"Landlord Lien State" means such states in which a landlord's claim for rent may have priority over the Lien of the Agent in any of the Collateral.

"Latest Maturity Date" means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest termination date of any Extended Commitment or Additional Commitment, as applicable, as extended in accordance with this Agreement from time to time.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on or prior to the date when required to be reimbursed by the Borrowers or refinanced as a Revolving Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means (a) Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Lender selected by the Agent in its reasonable discretion), and (b) any other Lender approved by the Agent and the Lead Borrower in their reasonable discretion. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Borrower" has the meaning specified in the introductory paragraph hereto.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrower and the Agent.

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder ~~and shall include the Existing Letters of Credit~~.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is five (5) Business Days prior to the Maturity Date then in effect.

"Letter of Credit Fee" has the meaning provided therefor in Section 2.03(i).

"Letter of Credit Sublimit" means an amount equal to $15,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Commitments.

"LIBOR" has the meaning specified in the definition of LIBOR Rate.

"LIBOR Borrowing" means a Borrowing comprised of LIBOR Rate Loans.

"LIBOR Rate" means:

(a) for any Interest Period with respect to a LIBOR Rate Loan, the rate per annum rate of interest ~~(rounded upwards, if necessary, to the next 1/16th of one percent (1%)) and in no event less than zero) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period for a term equivalent to such period,~~ equal to the London Interbank Offered Rate~~, or comparable or successor rate approved by Agent,~~ as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period ("LIBOR") as published on the applicable ~~Reuters~~Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time)~~; provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice.~~ at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two London Banking Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the LIBOR Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"LIBOR Rate Loan" means a Revolving Loan that bears interest at a rate based on the ~~Adjusted~~ LIBOR Rate.

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Laws as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or "going-out-of-business", "store closing" or other similar sale or any other Disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loan" means an extension of credit by a Lender to the Borrowers under Article II in the form of a Revolving Loan or a Swing Line Loan.

"Loan Account" has the meaning provided therefor in Section 2.11(a).

"Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate Commitments or (b) the Borrowing Base.

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Fee ~~Letter~~Letters, all Borrowing Base Certificates, the Blocked Account Agreements, the Credit Card Notifications, the Security Documents, the Facility Guaranty, ~~the Intercompany Subordination Agreement,~~ the Hot Topic Tri-Party Agreement, the Confirmation and Ratification Agreement, the Third Amendment Confirmation and Ratification Agreement and any other instrument or agreement now or hereafter executed and delivered in connection herewith.

"Loan Parties" means, collectively, the Borrowers and the Guarantors.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Management Fees" means management fees payable by the Loan Parties pursuant to the Sponsor Management Agreement.

"Management Stockholders" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or any Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date or will become holders of such Equity Interests in connection with the Transactions.

"Market Capitalization" mean an amount equal to (a) the total number of issued and outstanding shares of common Equity Interests of the Borrower, Holdings or any other Parent Company on the date of the declaration of the applicable Restricted Payment multiplied by (b) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its material obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or the Lenders under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party the breach or termination of which could reasonably be expected to result in a Material Adverse Effect.

"Material Domestic Subsidiary" means, as of the Effective Date and thereafter at any date of determination, each of the Borrowers' Domestic Subsidiaries that is a Restricted Subsidiary (a) whose Total Assets at the last day of the most recent Measurement Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Domestic Subsidiary at the last day of the most recent Measurement Period) were equal to or greater than 5.0% of Total Assets of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries at such date or (b) whose gross revenues for such Measurement Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Domestic Subsidiary for such Measurement Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries for such Measurement Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time ~~after the date which is 30 days~~ after the Effective Date ~~(or such longer period as the Agent may agree in its sole discretion)~~, Domestic Subsidiaries that are not Material Domestic Subsidiaries solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Measurement Period) 7.5% of Total Assets of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Measurement Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Domestic Subsidiaries for such Measurement Period) 7.5% of the consolidated gross revenues of the Borrowers and the Restricted Subsidiaries that are Domestic Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Measurement Period, then the Lead Borrower shall, not later than thirty (30) days after the date by which financial statements for such Measurement Period were required to be delivered pursuant to this Agreement (or such longer period as the Agent may agree in its reasonable discretion), (i) designate in writing to the Agent one or more of such Domestic Subsidiaries that are Restricted Subsidiaries as "Material Domestic Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries.

"Material Foreign Subsidiary" means, as of the Effective Date and thereafter at any date of determination, each of the Borrowers' Foreign Subsidiaries that are Restricted Subsidiaries (a) whose Total Assets at the last day of the most recent Measurement Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Foreign Subsidiary at the last day of the most recent Measurement Period) were equal to or greater than 5.0% of Total Assets of the Restricted Subsidiaries that are Foreign Subsidiaries at such date or (b) whose gross revenues for such Measurement Period

(when taken together with the revenues of the Restricted Subsidiaries of such Foreign Subsidiary for such Measurement Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Restricted Subsidiaries that are Foreign Subsidiaries for such Measurement Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time ~~after the date which is 30 days~~ after the Effective Date ~~(or such longer period as the Agent may agree in its sole discretion)~~, Foreign Subsidiaries that are not Material Foreign Subsidiaries comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Foreign Subsidiaries at the last day of the most recent Measurement Period) 7.5% of Total Assets of the Restricted Subsidiaries that are Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) as of the end of the most recently ended Measurement Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Foreign Subsidiaries (excluding Subsidiaries otherwise constituting Excluded Subsidiaries) for such Measurement Period) 7.5% of the consolidated gross revenues of the Restricted Subsidiaries that are Foreign Subsidiaries for such Measurement Period, then the Lead Borrower shall, not later than thirty (30) days after the date by which financial statements for such Measurement Period were required to be delivered pursuant to this Agreement (or such longer period as the Agent may agree in its reasonable discretion), designate in writing to the Agent one or more of such Foreign Subsidiaries that are Restricted Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true.

"Material Indebtedness" means Indebtedness (other than the Obligations but including Other Liabilities which constitute Indebtedness) of the Loan Parties in an aggregate principal amount exceeding $10,000,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included. ~~For the avoidance of doubt, the Intercompany Subordinated Indebtedness shall constitute Material Indebtedness at all times hereunder.~~

"Maturity Date" means the later of (a) ~~October 23~~June 14, ~~2022~~2026 (the "Initial Maturity Date"), (b) with respect to any Lender which participates in any Extension Series pursuant to Section 2.17, such extended maturity date relating to such Extension Series as determined pursuant to such Section 2.17, and (c) with respect to any FILO Tranche, the maturity date applicable to such FILO Tranche in accordance with the terms hereof.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Measurement Period" means, at any date of determination, the most recently completed twelve Fiscal Months of Holdings and its Subsidiaries.

~~"MLPFS" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation.~~

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Lead Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Necessary Cure Amount" has the meaning specified in Section 8.04(2).

"Net Proceeds" means (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) minus (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), and (B) the reasonable and customary out-of-pocket fees, commissions and expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, on account of appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)) and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction (or such longer period as may apply in the event of an installment sale or similar transaction) as a result of any gain recognized in connection therewith.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such

time.

"Non-Extension Notice Date" has the meaning provided therefor in Section 2.03(b)(iii).

"Note" means a Revolving Note and the Swing Line Note, as each may be amended, supplemented or modified from time to time.

"Notice Date" has the meaning provided therefor in Section 2.17.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Subsidiary thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Rate Early Opt-in" means the Agent and the Lead Borrower have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(ii) and paragraph (2) of the definition of "Benchmark Replacement".

"Other Liabilities" means all obligations on account of (i) any Cash Management Services furnished to any of the Loan Parties or any of their Restricted Subsidiaries, and/or (ii) any Bank Product furnished to any of the Loan Parties and/or any of their Restricted Subsidiaries; provided that Other Liabilities of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

"Outstanding Amount" means (a) with respect to Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts or the refinancing of such unreimbursed amounts as Borrowings hereunder.

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made, Availability is less than zero.

"Parent Company" means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Equity Interests of the Lead Borrower. For the avoidance of doubt, Holdings is a Parent Company of the Lead Borrower. Notwithstanding the foregoing, a passive holding company or special purpose acquisition vehicle shall not be considered a "Person" for purposes of this definition and instead the equityholders of such passive holding company or special purpose acquisition vehicle shall be considered for purposes of the foregoing.

"Participant" has the meaning provided therefor in Section 10.06(d).

"Participant Register" has the meaning provided therefor in Section 10.06(d).

"Patriot Act" has the meaning provided therefor in Section 10.17.

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Specified Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, (b) immediately after giving pro forma effect to such transaction or the making of such payment, the Pro Forma Availability Condition has been satisfied, (c) the Consolidated Fixed Charge Coverage Ratio for the Measurement Period preceding such transaction or the making of such payment shall be greater than or equal to 1.0 to 1.0, provided that the provisions of this clause (c) shall not be applicable if Availability, calculated in accordance with clause (b) hereof, immediately after giving pro forma effect to such transaction or payment and for the thirty (30) day period immediately preceding such transaction or payment is greater than or equal to seventeen and one-half percent (17.5%) of the Loan Cap; and (d) the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Responsible Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b) and (c) above, as applicable.

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan but excluding a Multiemployer Plan) that (a) is maintained or is contributed to by the Lead Borrower ~~and~~or (b) with respect to which the Lead Borrower has any liability or contingent liability (including on account of any ERISA Affiliate) and, in each case, is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law; provided that the foregoing condition shall only be required to be satisfied for any Acquisition (i) involving a merger, consolidation or acquisition of Equity Interests of a Person, (ii) of all or substantially all of the assets of a Person, or (iii) to the extent applicable Law, the Organization Documents of the Person which is the subject of such Acquisition, or the applicable purchase agreement, merger agreement or similar definitive documentation otherwise require such board approval;

(b) the Lead Borrower shall have furnished the Agent with reasonable prior written notice of such intended Acquisition;

(c) any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement or substantially the same lines of business (or reasonably related thereto) as one or more of the principal businesses of a Borrower;

(d) if the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an Acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a Borrower hereunder or as a Guarantor to the extent required pursuant to Section ~~6.12~~6.11, and the Agent shall have received a first priority security interest in such Subsidiary's Equity Interests and property of such Subsidiary of the same nature as constitutes Collateral under the Security Documents (subject, in each case, to Permitted Encumbrances having priority by operation of applicable law); and

(e) the Loan Parties shall have satisfied the Payment Conditions.

"Permitted Discretion" means the Agent's good-faith and reasonable (from the perspective of a secured asset-based lender in credit facilities of the type contemplated hereby) business judgment and consistent with the Agent's customary practices in asset-based credit facilities of the type contemplated hereby. Notwithstanding the foregoing, it shall not be within Permitted Discretion for the Agent to establish Reserves which are duplicative of each other whether or not such Reserves fall under more than one Reserve category.

"Permitted Disposition" means any of the following:

(a) dispositions of Inventory in the ordinary course of business;

(b) bulk sales or other dispositions at arm's length of the Inventory of a Loan Party not in the ordinary course of business in connection with Permitted Store Closings;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;

(e) dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary;

(f) sales, transfers and dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(g) sales, transfers and dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party;

(h) as long as no Default or Event of Default then exists or would arise therefrom, sales of Real Estate of any Loan Party (or sales of any Person or Persons created to hold such Real Estate or the Equity Interests in such Person or Persons), including sale-leaseback transactions involving any such Real Estate pursuant to leases on market terms, as long as, (A) such sale is made for fair market value, and (B) in the case of any sale-leaseback transaction permitted hereunder, the Loan Parties shall have used commercially reasonable efforts to deliver to the Agent a Collateral Access Agreement duly executed by each such purchaser or transferee and on terms and conditions reasonably satisfactory to the Agent;

(i) to the extent constituting a Disposition, the making of Permitted Investments;

(j) leases, subleases, licenses and sublicenses of real or personal property (other than Intellectual Property) entered into by Loan Parties and their Subsidiaries in the ordinary course of business at arm's length and on market terms;

(k) Dispositions of Equipment to the extent that (i) such Equipment is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, or (iii) such Disposition is pursuant to a sale-leaseback transaction permitted hereunder;

(l) as long as no Change of Control would arise therefrom, the sale or issuance of any Equity Interests (other than Disqualified Stock) by Holdings or any Subsidiary thereof;

(m) the Disposition of any asset which is subject to or has sustained any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding;

(n) as long as no Default or Event of Default then exists or would arise therefrom, Dispositions of Intellectual Property that, in the judgment of a Loan Party, is no longer useful or necessary in its business or that of any Subsidiary;

(o) (i) so long as no Cash Dominion Event has then occurred and is continuing, Dispositions of cash and Cash Equivalents to the extent otherwise permitted hereby, and (ii) after the occurrence of a Cash Dominion Event, Dispositions of cash in the Excluded Accounts and proceeds of Loans made hereunder to pay expenses or engage in transactions otherwise permitted hereby;

(p) Dispositions of delinquent Accounts for collection purposes for fair value;

(q) other Dispositions not expressly permitted pursuant to the foregoing clauses (a) through (p), provided that (i) the aggregate fair market value (as determined by the Lead Borrower in good faith) of all assets Disposed of in reliance upon this clause (q) shall not exceed $15,000,000 in any calendar year, and (ii) no Event of Default then exists or would arise therefrom; and

(r) other Dispositions, so long as, the Borrowers or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Disposition) at least equal to the fair market value (measured at the time of contractually agreeing to such Disposition) of the assets sold or otherwise disposed of, and at least 75.0% of the consideration for such Disposition received by the Borrowers or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (r):

(i) any securities, notes or other obligations or assets received by the Borrowers or any Restricted Subsidiary from such transferee or in connection with such Disposition (including earnouts and similar obligations) that are converted by the Borrowers or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Disposition; and

(ii) any Designated Non-Cash Consideration received by the Borrowers or any Restricted Subsidiary in such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed $5.0 million (or, at the Borrowers' option, at the time of contractually agreeing to such Disposition), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrowers' option, either at the time of contractually agreeing to such Disposition or at the time received and, in either case, without giving effect to any subsequent change(s) in value;

provided that, in the event of (x) a Disposition of more than ten (10%) percent of assets of the type included in the Borrowing Base pursuant to a single transaction or a series of related transactions, the Borrowers shall deliver an updated Borrowing Base Certificate to the Agent, prepared on a pro forma basis after giving effect to such Disposition, and (y) in the event of a Disposition of Intellectual Property used or useful in connection with the assets included in the Borrowing Base, the purchaser, assignee or other transferee thereof agrees in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent, and *provided further* that in the case of a Disposition of Intellectual Property licensed by the Lead Borrower or one of its Restricted Subsidiaries from a third party, the transferee thereof shall be required to provide such a license only to the extent to which the applicable license gives it a right to do so.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet delinquent or are being contested in compliance with Section 6.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 6.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

(d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the Third Amendment Effective Date listed on Schedule 7.01 and Liens to secure any Permitted Refinancings of the Indebtedness with respect thereto;

(h) Liens on fixed or capital assets of any Loan Party which secure Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of the applicable assets, and (iii) such Liens shall attach only to the assets acquired, improved or refinanced with such Indebtedness and shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent;

(j) landlords' and lessors' statutory Liens in respect of rent not in default;

(k) possessory Liens in favor of brokers and dealers arising in connection with the acquisition of or disposition of Permitted Investments, provided that such liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course of business and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, Liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings (or similar filings under other applicable Law) regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(n) voluntary Liens on property (other than property of the type included in the Borrowing Base) in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(p) Liens in favor of any holder of Indebtedness permitted pursuant to clause (j) of the definition of "Permitted Indebtedness"; provided that such Liens shall be junior and subordinate to the Liens securing the Obligations and the holder of such Indebtedness shall have entered into an intercreditor and subordination agreement with the Agent on terms reasonably acceptable to the Agent;

(q) leases, licenses, subleases or sublicenses granted to other Persons in the ordinary course of business which do not (i) interfere in any material respect with the business of the Loan Parties or (ii) secure any Indebtedness for borrowed money;

(r) any interest or title of (i) a lessor or sublessor under any lease or sublease or (ii) a licensor or sublicensor under any license or sublicense, in each case entered into in the ordinary course of business, so long as such interest or title relates solely to the assets subject thereto;

(s) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(t) any interest or title of a lessor under any operating lease and all Liens on the underlying assets subject to such lease that affect such lessor's interest or title in such asset;

(u) Liens deemed to exist in connection with Investments in financial repurchase agreements that qualify as Cash Equivalents provided that such Liens do not extend to any assets other than the assets that are the subject of such repurchase agreement;

(v) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(w) Liens in favor of the L/C Issuer on cash collateral securing the obligations of a Defaulting Lender to fund risk participations hereunder;

(x) Liens in respect of the licensing of Intellectual Property in the ordinary course of business, to the extent such licensing is otherwise permitted hereunder;

(y) Liens upon In-Transit Inventory arising in the ordinary course of business in favor of Persons from time to time approved in writing by the Agent, subject to such conditions or documentation as the Agent, in its Permitted Discretion may set forth or require in such writing, and securing only obligations in favor of such Persons resulting from the transport of such In-Transit Inventory (and not associated with Indebtedness (whether for borrowed money or otherwise) or other unrelated obligations), which obligations are not overdue by more than sixty

(60) days or are being contested in compliance with Section 6.04; provided that this clause (y) shall not be deemed to limit or impair any right of the Agent, in its Permitted Discretion, to establish, maintain or modify Reserves relative to Inventory subject to such Liens;

(z) other Liens securing obligations in an aggregate amount not to exceed $20,000,000;

(aa) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (q) of the definition of Permitted Indebtedness; *provided* that to the extent such Liens are on assets constituting Collateral that is included in the Borrowing Base and other current asset collateral, as described in a customary intercreditor agreement entered into by the Agent (collectively, the "ABL Priority Collateral") (but which shall not be required to be on assets constituting Collateral), together with any Permitted Refinancing in respect thereof, such Liens shall be secured on a junior basis to the Liens securing the Obligations, and the collateral agent in respect of such Indebtedness shall have entered into a customary intercreditor agreement reasonably acceptable to the Agent and the Borrowers; and

(bb) Liens securing Indebtedness incurred under clause (r) of the definition of Permitted Indebtedness, together with any Permitted Refinancing in respect thereof, *provided* that such Liens shall be subject to the terms of the ABL Intercreditor Agreement.

"Permitted Holders" means ~~the Sponsor~~(1) the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; provided that in the case of such group and without giving effect to the existence of such group or any other group, such Investor and Management Stockholders, collectively, have beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent, and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Permitted Parent. Notwithstanding the foregoing, a passive holding company or special purpose acquisition vehicle shall not be considered a "Person" for purposes of this definition and instead the equityholders of such passive holding company or special purpose acquisition vehicle shall be considered for purposes of the foregoing.

"Permitted Indebtedness" means each of the following:

(a) Indebtedness outstanding on the Third Amendment Effective Date listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) (i) purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof in an aggregate amount not to exceed $20,000,000 at any time outstanding, and (ii) purchase money Indebtedness of any Loan Party to finance the acquisition of any real or personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, in connection with the potential addition of an additional distribution and/or fulfillment center facility and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof; provided that, in each case, if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(d) Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided that, if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(e) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business;

(f) obligations (contingent or otherwise) of any Loan Party or any Restricted Subsidiary thereof existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided that such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, has a final maturity which extends beyond the Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of a Loan Party);

(i) the Obligations;

(j) other secured Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed $20,000,000 at any time outstanding; provided that (i) to the extent such Indebtedness is secured, it is secured on the Collateral on a junior basis to the Liens securing the Obligations of such Loan Party arising under the Loan Documents, (ii) the weighted average life to maturity of such Indebtedness is greater than or equal to the weighted average life to maturity of the of the Commitments at the time such Indebtedness is incurred, and (iii) such Indebtedness does not mature or have any scheduled amortization or payments, repurchases or redemptions of principal (other than customary amortization payments), in each case, prior the Latest Maturity Date (or, in the case of Subordinated Indebtedness, 91 days after the Latest Maturity Date) of the Commitments at the time such Indebtedness is incurred;

(k) Subordinated Indebtedness;

(l) Guarantees (i) by any Loan Party and its Restricted Subsidiaries of any Indebtedness of any other Loan Party permitted hereunder and (ii) as long as no Default or Event of Default has occurred and is continuing or would arise therefrom, by any Loan Party and its Restricted Subsidiaries of any Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Loan Party to the extent such Guarantees comply with the provisions of clause (c)(iv) of the definition of "Permitted Investments";

(m) contingent liabilities arising with respect to customary indemnification obligations in favor of sellers in connection with Permitted Acquisitions;

(n) Indebtedness incurred by any Loan Party or any Restricted Subsidiary thereof in the ordinary course of business in connection with the financing of insurance premiums;

(o) to the extent constituting Indebtedness, Indebtedness due to the Sponsor on account of the accrual of Management Fees and transaction fees;

(p) unsecured Indebtedness not otherwise specifically described herein and in an aggregate principal amount not to exceed $30,000,000 at any time outstanding, so long as any such Indebtedness in an amount greater than $15,000,000 does not mature prior the Latest Maturity Date of the Commitments at the time such Indebtedness is incurred;

(q) Permitted Ratio Debt; and

(r) Indebtedness incurred pursuant to the Term Loan Facility in an aggregate principal amount not to exceed the sum of (w) $~~260,000,000~~350,000,000 *plus* (x) the aggregate amount of Incremental Term Loans (as defined in the Term Loan Facility as in effect on the Third Amendment Effective Date (and not giving effect to any subsequent amendments thereto)) *plus* (y) Permitted Incremental Equivalent Debt (as defined in the Term Loan Facility as in effect on the Third Amendment Effective Date (and not giving effect to any subsequent amendments thereto)) *plus* (z) other Term Loan Obligations (not constituting principal and, in each case, together with any Permitted Refinancing in respect thereof (which includes, for the avoidance of doubt, ~~Credit Agreement Refinancing Indebtedness and Refinancing Indebtedness (in each case,~~ Permitted Debt Exchange Notes (as defined in the Term Loan ~~Credit Agreement~~Facility as in effect on the ~~First~~Third Amendment Effective Date (and not giving effect to any subsequent amendments thereto))).

"Permitted Investments" means each of the following:

(a) Cash Equivalents;

(b) Investments existing on the Third Amendment Effective Date set forth on Schedule 7.02 and any extension or renewal thereof, but not any increase in the amount thereof;

(c) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding as of the Third Amendment Effective Date, (ii) additional Investments (including capital contributions) by any Loan Party and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Wholly-Owned Subsidiaries that are not Loan Parties in an aggregate outstanding amount invested after the Third Amendment Effective Date not to exceed $30,000,000 at any time; ~~provided that to the extent such Investment includes Intellectual Property material and necessary for the operation of the assets of the Loan Parties and their Subsidiaries, taken as a whole, which constitute ABL Priority Collateral, such Intellectual Property shall be subject to a non-exclusive royalty-free worldwide license in favor of the Agent for the purpose of the Agent's exercise of rights and remedies under this Agreement in connection with the ABL Priority Collateral;~~

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees constituting Permitted Indebtedness;

(f) Investments by any Loan Party in Swap Contracts permitted hereunder;

(g) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(h) Investments received as the non-cash portion of consideration received in connection with Permitted Dispositions;

(i) advances to officers, directors and employees of the Loan Parties and Restricted Subsidiaries in the ordinary course of business outstanding for ordinary business purposes or notes from officers, directors and employees in exchange for Equity Interests of the Lead Borrower purchased by such officers, directors or employees, in an amount not to exceed, as to all Investments described in this clause (i), $5,000,000 at any time;

(j) Investments constituting Permitted Acquisitions and earnest money deposits made in connection with any letter of intent or purchase agreement entered into in connection with any Permitted Acquisition; provided that Permitted Acquisitions by the Loan Parties in Wholly-Owned Subsidiaries that are not Loan Parties in an aggregate outstanding amount invested after the Third Amendment Effective Date shall not exceed $30,000,000 at any time;

(k) to the extent constituting an Investment, acquisitions of Inventory in the ordinary course of business;

(l) bank deposits in the ordinary course of business, subject to the provisions of Section 6.12;

(m) Investments consisting of extensions of credit by any Subsidiary of a Borrower that is not a Loan Party to any Loan Party; provided that (i) each Loan Party and its Subsidiaries shall accurately record all intercompany transactions on its books and records, and (ii) such intercompany loans shall be subordinated to the Obligations as evidenced by a subordination agreement in form and substance reasonably satisfactory to the Agent and shall otherwise be on terms reasonably satisfactory to the Agent; ~~and~~

~~(n~~

(n) Investments in connection with any IPO Reorganization Transaction;

(o) payments to or from, and transactions with, a Parent Company following the consummation of a Qualifying IPO, in each case in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(p) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (p) that are at that time outstanding, not to exceed $50,000,000 (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); and

(q) so long as the Payment Conditions are satisfied and without increasing the amounts permitted under any other clause of this definition, additional Investments not otherwise specifically described herein.

provided, however, that notwithstanding the foregoing, (i) after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) and (~~n~~q) shall be permitted to be made unless either (A) no Loans or, if then required to be Cash Collateralized, Letters of Credit are then outstanding, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a LIBOR Rate Loan, the proceeds of which Investment will be applied to the Obligations after the expiration of such Interest Period, and (ii) such Investments shall be pledged to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

"Permitted Overadvance" means an Overadvance made by the Agent, in its discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or

(b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;

(c) is made to pay any other amount chargeable to any Loan Party hereunder or under any other Loan Document; and

(d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Borrowing Base at any time, or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree.

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, (i) the Total Outstandings would exceed the Aggregate Commitments (as in effect prior to any termination of the Aggregate Commitments pursuant to Section 2.06 or 8.02 hereof) , or (ii) at any time that there are only two (2) Lenders and a Specified Event of Default exists, any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date) requests the Agent in writing to cease making such Overadvances.

"Permitted Parent" means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

"Permitted Ratio Debt" means Indebtedness of the Borrowers or any Restricted Subsidiary; provided that (a) such Indebtedness does not mature or have any scheduled amortization or payments, repurchases or redemptions of principal (other than customary amortization payments), in each case, prior the Latest Maturity Date (or, in the case of Subordinated Indebtedness, 91 days after the Latest Maturity Date) of the Commitments at the time such Indebtedness is incurred, (b) the Total Net Leverage Ratio after giving *pro forma effect* to the incurrence of such Indebtedness, as of the end of the most recently ended Measurement Period, is no greater than ~~2.50~~3.50 to 1.00, (c) such Indebtedness may be secured to the extent such Liens constitute Permitted Encumbrances in accordance with the definition thereof and (d) the aggregate amount of Permitted Ratio Debt incurred by Restricted Subsidiaries of the Borrowers that are not and do not become Guarantors, shall not exceed $~~30.0~~60.0 million.

"Permitted Refinancing" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced; provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions, expenses and other transaction costs and by an amount equal to any existing commitments unutilized thereunder), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced (and if secured, shall be subject to a lien subordination or other intercreditor agreement on terms not less favorable to the Agent than the terms of the lien subordination or other intercreditor agreement, if any, applicable to the Indebtedness being Refinanced), (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

"Permitted Store Closings" means Store closures and related Inventory dispositions which do not exceed (i) in any Fiscal Year of the Lead Borrower and its Subsidiaries, fifteen percent (15%) of the number of the Borrowers' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the Third Amendment Effective Date, thirty percent (30%) of the number of the Borrowers' Stores in existence as of the Third Amendment Effective Date (net of new Store openings).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Plan" means (i) any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiemployer Plan), maintained ~~for employees of~~by the Lead Borrower or ~~any ERISA Affiliate or (ii) any such Plan~~under or with respect to which the Lead Borrower ~~or, solely with respect to a Pension Plan or Multiemployer Plan, any~~has any liability or contingent liability (including on account of ERISA Affiliate ~~is required to contribute on behalf of any of its employees~~).

"Platform" has the meaning provided therefor in Section 6.02.

"Preferred Stock" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

"Pro Forma Availability Condition" shall mean, as of any date of calculation, Pro Forma Excess Availability will be equal to or greater than twelve and one-half percent (12.5%) of the Loan Cap.

"Pro Forma Excess Availability" shall mean, as of any date of calculation, after giving pro forma effect to the transaction then to be consummated or payment to be made, Availability as of the date of such transaction or payment and for each day of the thirty (30) day period immediately preceding such transaction or payment.

"Pro Forma RP Availability Condition" shall mean, as of any date of calculation, Pro Forma Excess Availability will be equal to or greater than fifteen percent (15%) of the Loan Cap.

"Public Company Costs" means charges associated with, or in anticipation of, or preparation for, (i) establishing compliance with the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith and charges relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, (ii) the rules of national securities exchange companies with listed equity or debt securities, (iii) employees', consultants', directors' or managers' compensation, fees and expense reimbursement, (iv) relating to investor relations, shareholder meetings and reports to shareholders or debtholders, (v) directors' and officers' insurance and other executive costs, (vi) legal and other professional fees and listing fees, and (vii) other expenses arising out of or incidental to any of the foregoing.

"Public Lender" has the meaning provided therefor in Section 6.02.

"~~Public Market" shall exist if (a) a Public Offering has been consummated and (b) any Equity Interests of the Lead Borrower have been distributed by means of an effective registration statement under the Securities Act of 1933.~~

~~"Public Offering" means a public offering of the Equity Interests of the Lead Borrower pursuant to an effective registration statement under the Securities Act of 1933~~QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 10.27.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualifying IPO" means (a) the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of Equity Interests in the IPO Entity, (b) any transaction or series of transactions that results in any common Equity Interests of the IPO Entity being publicly traded on any United States national securities exchange or over the counter market, or any analogous exchange or market in Canada, the United Kingdom or any member country of the European Union or (c) the acquisition, purchase, merger or combination of the IPO Entity, by, or with, a publicly traded special acquisition company.

"Qualified Proceeds" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"Real Estate" means all real property subject to a Lease and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any Obligation (excluding those on account of Other Liabilities) of any Loan Party hereunder.

"Register" has the meaning provided therefor in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of the Lead Borrower and its Subsidiaries as prescribed by the Securities Laws.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"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 any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Reports" has the meaning provided therefor in Section 9.12(b).

"Request for Credit Extension" means (a) with respect to a Borrowing, Conversion or continuation of Revolving Loans, a Revolving Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, at least two Lenders holding more than 50% of the Aggregate Commitments or, if the Aggregate Commitments have been terminated, at least two Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Rescindable Amount" has the meaning provided therefor in Section 9.16.

"Reserves" means all Inventory Reserves and Availability Reserves. The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish new, or modify or eliminate any existing, Reserves upon three (3) Business Days prior notice to the Lead Borrower (during which period the Agent shall be available to discuss any such proposed Reserve with the Lead Borrower); provided that (i) no such prior notice shall be required (~~i~~1) after the occurrence and during the continuance of an Event of Default or (~~ii~~2) for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously disclosed and utilized, and (ii) upon such notice, the Borrowers will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves.

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

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any ~~capital stock~~Capital Stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such ~~capital stock~~Capital Stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent

of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"Restricted Subsidiary" means any Subsidiary of any Loan Party which is not an Unrestricted Subsidiary.

"Revolving Borrowing" means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Revolving Loan" means an extension of credit by a Lender to a Borrower pursuant to Section 2.01.

"Revolving Loan Notice" means a notice of (a) a Revolving Borrowing, (b) a Conversion of Revolving Loans from one Type to the other, or (c) a continuation of LIBOR Rate Loans, pursuant to Section 2.02(b), which, if in writing, shall be substantially in the form of Exhibit A.

"Revolving Note" means a promissory note made by the Borrowers in favor of a Lender evidencing Revolving Loans made by such Lender, substantially in the form of Exhibit C-1.

"RP Conditions" means, at the time of determination with respect to the making of any Restricted Payment, that (a) no Specified Event of Default then exists or would arise as a result of the making of such Restricted Payment, (b) immediately after giving pro forma effect to such Restricted Payment, the Pro Forma RP Availability Condition has been satisfied, (c) the Consolidated Fixed Charge Coverage Ratio for the Measurement Period preceding such Restricted Payment shall be greater than or equal to 1.0 to 1.0, provided that the provisions of this clause (c) shall not be applicable if Availability, calculated in accordance with clause (b) hereof, immediately after giving pro forma effect to such Restricted Payment and for the thirty (30) day period immediately preceding such Restricted Payment is greater than or equal to twenty percent (20%) of the Loan Cap; and (d) the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Responsible Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b) and (c) above, as applicable.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sanction(s)" means any applicable economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the European Union, Her Majesty's Treasury ("HMT") or other sanctions authority with applicable jurisdiction.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"Seasonal Advance Rate Increase Percentage" two and one-half percent (2.5%).

"Seasonal Overadvance Period" shall mean the period in each year commencing September 1 and ending on December 31.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Securities Laws" means the Securities Act ~~of 1933~~, the ~~Securities~~ Exchange Act ~~of 1934~~, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the Security Agreement dated as of the Closing Date among the Loan Parties and the Agent.

"Security Documents" means the Security Agreement, the Blocked Account Agreements, the Credit Card Notifications, any Collateral Access Agreement, any Custom Broker/Carrier Agreement, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Settlement Date" has the meaning provided therefor in Section 2.14(a).

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Lead Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"Similar Business" means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date.

"SOFR" has the meaning provided therefor in the definition of "Daily Simple SOFR".

"SOFR Early Opt-in" means the Agent and the Lead Borrower have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of "Benchmark Replacement".

"Solvent" and "Solvency" means, with respect to any Person and its Restricted Subsidiaries on a Consolidated basis on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in

the industry in which such Person is engaged, and (f) such Person is not "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code. The amount of all guarantees and other contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Availability" means the sum of (a) Availability and (b) the amount by which the Borrowing Base at such time exceeds the Aggregate Commitments up to an amount not to exceed 2.5% of the Aggregate Commitments.

"Specified Event of Default" means the occurrence of any Event of Default described in any of Sections 8.01(a), 8.01(b) (due to a failure to comply with Section 6.02(c), Section 6.12 or Section 7.15), 8.01(d) (due to any material misrepresentation with respect to a Borrowing Base certification to the extent not corrected within three (3) Business Days following the provision thereof, if capable of cure thereby) or 8.01(f).

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.25).

"Sponsor" means, collectively, Sycamore Partners Management L.L.C. and any of its respective Affiliates and funds or partnerships managed or advised by it (including Sycamore Partners, L.P. and Sycamore Partners A, L.P.), but not including, however, any portfolio company of any of the foregoing.

"Sponsor Management Agreement" means that certain Advisory Agreement, dated as of May 1, 2015 by and between Sycamore Partners Management, L.L.C., TopCo, and the Loan Parties, as amended, modified, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Standby Letter of Credit" means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

"Stated Amount" means at any time the maximum amount for which a Letter of Credit may be honored.

~~"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.~~

"Store" means any retail store (which may include any Real Estate, fixtures, Equipment, Inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms reasonably approved in writing by the Agent~~, including, without limitation, the Intercompany Subordinated Indebtedness~~.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Supported QFC" has the meaning specified in Section 10.27.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligations" means, with respect to any Loan Party, any obligation of such Loan Party to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) reasonably determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Bank of America, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning provided therefor in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Note" means the promissory note of the Borrowers substantially in the form of Exhibit C-2, payable to the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $20,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Swing Line Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Swing Line Sublimit, then the Swing Line Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Commitments.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan Credit Agreement" means the Term Loan Credit Agreement, dated as of the ~~First~~Third Amendment Effective Date, among Holdings, the Lead Borrower, ~~Cortland Capital Market Services LLC~~Bank of America, as administrative agent and collateral agent, and the lenders from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Permitted Refinancing in respect thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Term Loan Credit Agreement) in each case to the extent permitted hereunder.

"Term Loan Documents" means, collectively, (i) the Term Loan Credit Agreement and (ii) the security documents, intercreditor agreements (including the ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Term Loan Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Permitted Refinancing of the Term Loan Facility.

"Term Loan Facility" means the collective reference to the Term Loan Credit Agreement, the Term Loan Documents, any notes issued pursuant thereto and any guarantee, security agreement, patent, trademark or copyright security agreements, mortgages and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Permitted Refinancing in respect thereof (unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Term Loan Facility), in each case to the extent permitted hereunder.

"Term Loan Obligations" means "Obligations" as defined in the Term Loan Facility as in effect on the ~~date hereof~~Third Amendment Effective Date.

"Term SOFR" means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Termination Date" means the earliest to occur of (a) the Maturity Date, (b) the date on which the maturity of the Obligations (excluding Other Liabilities) is accelerated (or deemed accelerated) and the Aggregate Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (c) the termination of the Aggregate Commitments in accordance with the provisions of Section 2.06 hereof.

"Third Amendment" means that certain Third Amendment to Amended and Restated Credit Agreement by and among the Loan Parties, the Lenders party thereto, and the Agent, dated as of the Third Amendment Effective Date.

"Third Amendment Confirmation and Ratification Agreement" means that certain Confirmation and Ratification Agreement dated as of the Third Amendment Effective Date by and among the Loan Parties and the Agent.

"Third Amendment Effective Date" means June 14, 2021.

"Third Amendment Effective Date Distribution" means a special cash dividend to the direct and indirect holders of Equity Interests of the Lead Borrower made on or about the Third Amendment Effective Date; provided such Third Amendment Effective Date Distribution shall not use proceeds of any Revolving Loan unless otherwise pro forma compliant with the Payment Conditions.

"Third Amendment Fee Letter" means the letter entitled "Fee Letter" among the Borrowers and the Agent dated as of June 14, 2021.

"Total Assets" means, at any time, the total assets of the Borrowers and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Lead Borrower or such other Person as may be available (as determined in good faith by the Lead Borrower).

"Total Net Leverage Ratio" means, with respect to any Measurement Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Measurement Period to (b) Consolidated EBITDA of the Borrowers and their Restricted Subsidiaries for such Measurement Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Trademark" has the meaning set forth in the Security Agreement.

"Trading ~~with~~With the Enemy Act" has the meaning provided therefor in Section 10.18.

"Transaction Certificate" means a certificate substantially in the form of Exhibit H.

"Transactions" shall mean the amendment and restatement of the Existing Credit Agreement the transactions that occurred on the Effective Date.

"Type" means, with respect to a Revolving Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, or priority of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection, or priority, or availability of such remedy, as the case may be.

"UCP 600" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"UFCA" has the meaning provided therefor in Section 10.21(d).

"UFTA" has the meaning provided therefor in Section 10.21(d).

"UK Financial Institution" means any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unintentional Overadvance" means an Overadvance which, to the Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base or misrepresentation by the Loan Parties.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning provided therefor in Section 2.03(c)(i).

"Unrestricted Subsidiary" means a Subsidiary of a Loan Party designated by Holdings' ~~board~~Board of ~~directors~~Directors as such in accordance with Section 6.18.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.27.

"U.S. Tax Compliance Certificate" has the meaning provided therefor in Section 3.01(e)(ii)(B)(III).

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Wells Fargo" means Wells Fargo Bank, National Association.

"Wholly-Owned Subsidiary" means, with respect to any Person, any corporation, partnership or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors' qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers" means~~, with respect to any EEA Resolution Authority,~~ (a) the write-down and conversion powers of ~~such~~the applicable 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; or (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.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a

Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders, and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (i) the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts), providing Cash Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (x) unasserted contingent indemnification Obligations, (y) any Obligations relating to Bank Products (including Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized, and (y) any Obligations relating to Cash Management Services that, at such time, are allowed by the applicable provider of such Cash Management Services to remain outstanding without being required to be repaid, and (ii) the termination of the Aggregate Commitments and the obligation of the L/C Issuer to issue Letters of Credit hereunder.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements and related materials described in Sections 6.01(a), except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this

Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. ~~Without limiting the foregoing and notwithstanding any other provision~~Notwithstanding anything to the contrary 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, in a manner such that any obligations relating to a~~above, in the definition of "Attributable Indebtedness" or in the definition of "Capital Lease Obligation," at the time any determination thereof is to be made, the applicable amount shall be the amount of liability in respect of a capital lease ("finance lease" following the Lead Borrower's adoption of Accounting Standards Codification Topic 842 Leases, ASC 842) that would at such time be required to be capitalized and reflected as a capital lease~~ that~~on a balance sheet prepared in accordance with GAAP~~ as in effect on the Effective Date, would be accounted for by the Borrowers as an operating lease shall be accounted for as obligations relating to an operating lease and not as Capitalized~~. Any finance lease or similar obligations that would not constitute a finance lease prior to the Lead Borrower's adoption of Accounting Standards Codification Topic 842 Leases, ASC 842, shall be deemed not to represent Capital Lease Obligations~~ (and shall not constitute~~or Indebtedness~~ hereunder)~~.

1.04 Rounding. Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

1.07 Certifications. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

1.08 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

~~**1.09 LIBOR Discontinuation.**~~

Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining the London Interbank Offered Rate ("LIBOR") as used in the definition of "LIBOR Rate" for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "Scheduled Unavailability Date"), or

(c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Lead Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) (any such proposed rate, a "**LIBOR Successor Rate**"), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Lead Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders do not accept such amendment.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

As used in this Section 1.08:

"**LIBOR Screen Rate** " means the LIBOR quote on the applicable screen page the Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

~~"**LIBOR Successor Rate Conforming Changes**" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent determines in consultation with the Lead Borrower).~~

1.09 Interest Rates. The Agent does not warrant, nor accept responsibility, nor shall the Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBOR Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base;

provided that:

(a) after giving effect to any Revolving Borrowing, (x) the Total Outstandings shall not exceed the Loan Cap, and (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment; and

(b) the Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of each Lender's Commitments, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01.

2.02 Borrowings, Conversions and Continuations of Revolving Loans.

(a) Revolving Loans (other than Swing Line Loans) shall be either Base Rate Loans or LIBOR Rate Loans as the Lead Borrower may request subject to and in accordance with this Section 2.02. All Swing Line Loans shall be only Base Rate Loans. Subject to the other provisions of this Section 2.02, Revolving Borrowings of more than one Type may be incurred at the same time.

(b) Each Revolving Borrowing, each Conversion of Revolving Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Lead Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 1:00 p.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, Conversion to or continuation of LIBOR Rate Loans or of any Conversion of LIBOR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Agent of a written Revolving Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each Borrowing of, Conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or Conversion to Base Rate Loans shall be in such minimum amounts as the Agent may require. Each Revolving Loan Notice (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a Revolving Borrowing, a Conversion of Revolving Loans from one Type to the other, or a continuation of LIBOR Rate Loans, (ii) the requested date of the Borrowing, Conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, Converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be Converted, and (v) if applicable, the duration of the Interest Period with respect thereto.

If the Lead Borrower fails to specify a Type of Revolving Loan in a Revolving Loan Notice or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation of a LIBOR Rate Loan, then the applicable Revolving Loans shall be made as, or Converted to, Base Rate Loans. Any such automatic Conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loans. If the Lead Borrower requests a Borrowing of, Conversion to, or continuation of LIBOR Rate Loans in any such Revolving Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be Converted to a LIBOR Rate Loan.

(c) Following receipt of a Revolving Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Revolving Loans, and if no timely notice of a Conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic Conversion of LIBOR Rate Loans to Base Rate Loans described in Section 2.02(b). In the case of a Revolving Borrowing, each Lender shall make the amount of its Revolving Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Revolving Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by (i) crediting the account of the Lead Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower; provided, however, that if, on the date the Revolving Loan Notice with respect to such Borrowing is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(d) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the

Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Revolving Loans which are Base Rate Loans.

(e) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or Converted only on the last day of an Interest Period for such LIBOR Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, Converted to or continued as LIBOR Rate Loans without the Consent of the Required Lenders.

(f) The Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Revolving Borrowings, all Conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than five (5) Interest Periods in effect with respect to LIBOR Rate Loans.

(h) The Agent, the Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders, the Swing Line Lender and the L/C Issuer and the Borrowers, the Swing Line Lender, and each Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Revolving Loan bearing interest at the Base Rate and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvances. No portion of any Loan shall be funded or held with "plan assets" within the meaning of Section 3(42) of ERISA.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Loan Parties (including on behalf of any Restricted Subsidiary, Affiliate or holding company thereof; provided that if such Affiliate or holding company is not a Loan Party, a Loan Party shall be a co-applicant thereto), and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) below, and (2) to honor drawings under the

Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Loan Parties (including on behalf of any Restricted Subsidiary thereof) and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Loan Cap, (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. ~~All Existing Letters~~No portion of any Letter of Credit shall be ~~deemed to have been issued pursuant hereto, and shall be subject to and governed by the terms and conditions hereof~~funded or held with "plan assets" within the meaning of Section 3(42) of ERISA.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Agent has approved such expiry date; or

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Commercial Letter of Credit would occur more than 180 days after the date of issuance, unless the Agent has approved such expiry date; or

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree) or the Agent has approved such expiry date; or

(D) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it; or

(E) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally; or

(F) except as otherwise agreed by the Agent, such Letter of Credit is to be denominated in a currency other than Dollars; provided that if the L/C Issuer, with the consent of the Agent, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in the currency in which such Letter of Credit was denominated; or

(G) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(H) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either (i) the Letter of Credit then proposed to be issued, or (ii) such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Lead Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least two (2) Business Days (or such other date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Lead Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Subject to the provisions of Section 2.02(b)(v) hereof, promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied or unless the L/C Issuer would not be permitted, or would have no obligation, at such time to issue such Letter of Credit under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Loan Party or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance or amendment of each Letter of Credit, each Lender shall be deemed to (without any further action), and hereby irrevocably and unconditionally severally agrees to, purchase from the L/C Issuer, without recourse or warranty, a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the Stated Amount of such Letter of Credit. Upon any change in the Commitments under this Agreement, it is hereby agreed that with respect to all L/C Obligations, there shall be an automatic adjustment to the participations hereby created to reflect the new Applicable Percentages of the assigning and assignee Lenders.

(iii) If the Lead Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Standby Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Lead Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Standby Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Standby Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Any L/C Issuer (other than Bank of America or any of its Affiliates) shall notify the Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such L/C Issuer, provided that (A) until the Agent advises any such ~~Issuing Bank~~L/C Issuer that the provisions of Section 4.02 are not satisfied, or (B) the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and the L/C Issuer, such L/C Issuer shall be required to so notify the Agent in writing only once each week of the Letters of

Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Agent and such L/C Issuer may agree. The L/C Issuer will also deliver (contemporaneously with the notification set forth in the first sentence hereof) to the Lead Borrower and the Agent a true and complete copy of each such Letter of Credit or amendment.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Lead Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Agent thereof. Not later than 11:00 a.m. on the first ~~Business Day~~calendar day immediately following the date that the Lead Borrower receives notice from the L/C Issuer of a drawing under a Letter of Credit (each such date, an "Honor Date"), the applicable Borrower shall be deemed to have requested a Borrowing of Revolving Loans that are Base Rate Loans to be disbursed on the such Business Day in an amount equal to the amount of such payment by the L/C Issuer under the Letter of Credit without regard to the minimum and multiples specified in Section 2.02(b) for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02 (other than the delivery of a Revolving Loan Notice). In the event that such a Borrowing cannot be made pursuant to the terms hereof, then not later than 11:00 a.m. on the first ~~Business Day~~calendar day after the Honor Date, the applicable Borrower shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice from the Agent pursuant to Section 2.03(c)(i) make funds available to the Agent (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Loan that is a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason and the Borrowers have failed to reimburse the L/C Issuer pursuant to clause (c)(i) above, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced or reimbursed, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate for Revolving Loans which are Base Rate Loans. In such event, each Lender's payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Revolving Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender its L/C Advance in respect of such payment in accordance with Section 2.03(c), if the L/C Issuer, or the Agent for the account of the L/C Issuer, receives any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Agent pursuant to Section 2.03(g)), the L/C Issuer shall distribute any payment it receives to the Agent and the Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Agent.

(ii) If any payment received by the L/C Issuer or by Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Agent for the account of the L/C Issuer its Applicable

Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the L/C Issuer in connection with the foregoing. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Restricted Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Restricted Subsidiaries; or

(ix) the fact that any Default or Event of Default shall have occurred and be continuing.

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will immediately notify the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid. Notwithstanding the foregoing, the Borrowers shall not be precluded from asserting any claim for damages suffered by the Borrowers to the extent caused by the gross negligence, bad faith or willful misconduct of the L/C Issuer, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Loan Party or to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Required Lenders; (ii) any action taken or omitted in the absence of gross negligence, bad faith, or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit or any error in interpretation of technical terms; (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document; or (v) for any action, neglect or omission under or in connection with any Letter of Credit or Issuer Document, including, without limitation, the issuance or amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, or the honoring or dishonoring of any demand under any Letter of Credit, and such action or neglect or omission will be binding upon the Loan Parties and the Lenders; provided that the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to punitive, consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct, bad faith, or gross negligence, as determined by a final and non-appealable judgment of a court of competent jurisdiction. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct, bad faith, or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined by a final and non-appealable judgment of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or the L/C Issuer may refuse to accept and may refuse to make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit and may disregard

any requirement in a Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer shall not be responsible for the wording of any Letter of Credit (including, without limitation, any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent, unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance the L/C Issuer may provide to the Borrowers with drafting or recommending text for any Letter of Credit Application or with the structuring of any transaction related to any Letter of Credit, and each Borrower hereby acknowledges and agrees that any such assistance will not constitute legal or other advice by the L/C Issuer or any representation or warranty by the L/C Issuer that any such wording or such Letter of Credit will be effective. Without limiting the foregoing, the L/C Issuer may, as it deems reasonably appropriate, modify or alter and use in any Letter of Credit the terminology contained on the Letter of Credit Application for such Letter of Credit. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Cash Collateral. Upon the request of the Agent, if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 103% of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer (which documents are hereby Consented to by the Lenders). Sections 2.05, 2.06(b) and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. The Borrowers hereby grant to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing to secure all Obligations. Such cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Agent determines that any funds held as cash collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than 103% of the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as cash collateral, an amount equal to the excess of (x) 103% of the aggregate Outstanding Amount of L/C Obligations over (y) the total amount of funds, if any, then held as cash collateral that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as cash collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations in the manner specified in Section 8.03.

(h) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Lead Borrower when a Letter of Credit is issued ~~(including any such agreement applicable to an Existing Letter of Credit)~~ (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the UCP shall apply to each Commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate multiplied by the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be due and payable quarterly in arrears on the first ~~Business Day~~calendar day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, at the request of the Agent or the Required Lenders, all Letter of Credit Fees shall accrue at the Default Rate as provided in Section 2.08(b) hereof.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to 0.125% per annum, computed on the daily amount available to be drawn under such Letter of Credit and on a quarterly basis in arrears. Such fronting fees shall be due and payable on the first ~~Business Day~~calendar day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Loan Party (or on behalf of a Restricted Subsidiary), the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Loan Parties (or on behalf of Restricted Subsidiaries) inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender shall, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total

Outstandings shall not exceed the Loan Cap, and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Commitment and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and provided further that the Swing Line Lender shall not be obligated to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at the Base Rate plus the Applicable Margin for Base Rate Loans. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage *multiplied by* the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term "Agent" as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the provisos to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will use its commercially reasonable efforts to make the amount of its Swing Line Loan available to the Borrowers by not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice either by (i) crediting the account of the Lead Borrower on the books of Bank of America with the amount of such funds or (ii) wire transferring such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Swing Line Lender by the Lead Borrower; provided, however, that if, on the date of the proposed Swing Line Loan, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Refinancing of Swing Line Loans.

(i) In addition to settlements required under Section 2.14 hereof, the Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Lender make a Revolving Loan which is a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Lead Borrower with a copy of the applicable Revolving Loan Notice promptly after delivering such notice to the Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Revolving Loan Notice available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified in such Revolving Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan which is a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Revolving Loans which are Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute such payment to the Agent and the Agent shall distribute to each such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until a Lender funds its Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Revolving Loans, in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of LIBOR Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of LIBOR Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Loan Cap, as then in effect, the Borrowers shall immediately prepay the Loans and L/C Borrowings and Cash Collateralize the L/C Obligations (other than L/C Borrowings) in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations (other than L/C Borrowings) pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Loan Cap, as then in effect.

(d) (i) Upon the occurrence of a Cash Dominion Event, the Borrowers shall prepay the Loans as and to the extent required by the provisions of Section 6.12 hereof, and (ii) after the occurrence and during the continuance of an Event of Default or as and to the extent required by the provisions of Section 2.06(b), the Borrowers shall Cash Collateralize the L/C Obligations.

(e) [Reserved].

(f) Prepayments made pursuant to Section 2.05(c), (d), and (e) above and funds on deposit in the Collection Account required to be applied to the Obligations pursuant to Section 6.12(d)(iii), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Loans, third, after the occurrence and during the continuance of an Event of Default, shall be used to Cash Collateralize the remaining L/C Obligations; fourth, shall be applied ratably to Other Liabilities then due and payable; and fifth, the amount remaining, if any, after the prepayment in full of all L/C Borrowings and Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations (to the extent required hereunder) in full shall be deposited by the Agent in a deposit account of the Lead Borrower and may be utilized by the Borrowers in the ordinary course of its business to the extent otherwise permitted hereunder. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable, and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(g) Each prepayment of the Revolving Loans shall not reduce or terminate the Aggregate Commitments.

2.06 Termination or Reduction of Commitments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments. If, after giving effect to any reduction of the Commitments, the Letter of

Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess. To the extent there are any FILO Tranches outstanding at the time of any such reduction or termination of the Aggregate Commitments under this Section 2.06, such reduction or termination shall be applied first to the non-FILO Tranche of Revolving Loans on a pro-rata basis unless the Borrowers shall be in pro forma compliance with the Payment Conditions, in which case such reduction or termination may be applied to such FILO Tranche(s).

(b) The Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, or the Aggregate Commitments under this Section 2.06. Upon any reduction of the Aggregate Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. If, as a result of such termination or reduction, (i) the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, the Borrowers shall contemporaneously with such reduction or termination, Cash Collateralize such excess amount, (ii) the Swing Line Loans hereunder would exceed the Swing Line Sublimit, the Borrowers shall contemporaneously with such reduction or termination, pay the Agent an amount equal to such excess, and (iii) the Revolving Loans or the Swing Line Loans hereunder would exceed the Aggregate Commitments or the Swing Line Sublimit, as applicable, the Borrowers shall contemporaneously with such reduction or termination, pay the Agent an amount equal to such excess. Such reductions shall be applied pro rata to the Aggregate Commitments; provided that, if a FILO Tranche is outstanding, such reductions may be applied first to such FILO Tranche so long as the Borrowers shall be in pro forma compliance with the Payment Conditions.

2.07 Repayment of Obligations.

Except as provided in Section 10.11 with respect to the collateralization of the Other Liabilities, the Borrowers shall repay to the Lenders on the Termination Date all Obligations outstanding on such date (other than contingent indemnification claims for which a claim has not been asserted) and shall cause each Letter of Credit to be returned to the L/C Issuer undrawn or shall Cash Collateralize all L/C Obligations (to the extent not previously Cash Collateralized as required herein).

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the ~~Adjusted~~ LIBOR Rate for such Interest Period plus the Applicable Margin for LIBOR Rate Loans; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans.

(b)~~(i)~~ (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(ii) If any other Event of Default has occurred and is continuing, then the Agent, (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, at the request of any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, at the request of the Required Lenders, shall notify the Lead Borrower that all outstanding Obligations (excluding Other Liabilities) shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest to the fullest extent permitted by Law) shall be due and payable upon demand.

(c) Except as provided in Section 2.08(b)(iii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(i) Commitment Fee. The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Commitment Fee Percentage *multiplied by* the actual daily amount by which the Commitments exceed the sum of the Outstanding Amount of Revolving Loans and L/C Obligations (subject to adjustment as provided in Section 2.16) during the immediately preceding quarter. The commitment fee described in the immediately preceding sentence (the "Commitment Fee") shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first ~~Business Day~~calendar day of each January, April, July and October, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. It is hereby understood and agreed that Swing Line Loans shall not be considered utilization of the Commitment for purposes of the calculation of the commitment fees payable hereunder.

(ii) Other Fees. The Borrowers shall pay the fees specified in the Fee ~~Letter~~Letters to the Persons, in the amounts, and at the times specified in the Fee ~~Letter~~Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any

such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Revolving Loans or Swing Line Loans (in the case of the Swing Line Lender), as applicable, in addition to such accounts or records. Each Lender may, but shall not be obligated to, attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit and indemnity of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Except for principal payments to be made on the Settlement Date (as provided in Section 2.14), the Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day (other than with respect to payment of a LIBOR Rate Loan), and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b)~~(i)~~ (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to (A) the proposed date of any Borrowing of LIBOR Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing), or (B) the date that such Lender's participation in a Letter of Credit or Swing Line Loan is required to be funded, that such Lender will not make available to the Agent such Lender's share of such Borrowing or participation, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02), Section 2.03 or Section 2.04, as applicable, and may, in reliance upon such assumption, make available to the Borrowers, the L/C Issuer or the Swing Line Lender, as applicable, a corresponding amount. In such

event, if a Lender has not in fact made its share of the applicable Revolving Borrowing or participation available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Revolving Borrowing or participation to the Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Revolving Borrowing or participation in such Letter of Credit or Swing Line Loan. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the ~~time at~~date on which any payment is due to the Agent for the account ~~of any~~ of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. ~~In such event, if~~

With respect to any payment that the Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment~~,~~; (2) the Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the ~~amount~~Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, ~~or similar fees customarily charged by the Agent in connection with the foregoing~~.

(iii) A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment hereunder.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Credit Parties If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Credit Party's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or sub-participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or sub-participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment on account of the Other Liabilities prior to the occurrence of an Event of Default, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or sub-participations in L/C Obligations or Swing Line Loans to any Eligible Assignee or Participant, other than to the Loan Parties or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders

(a) The amount of each Lender's Applicable Percentage of outstanding Loans (including, for clarity, outstanding Swing Line Loans), shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Loans and repayments of Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Loans (including, for clarity, outstanding Swing Line Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, each Lender (other than the Swing Line Lender) shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender (including, for clarity, the Swing Line

Lender), such amounts as are necessary to insure that, after giving effect to all such transfers, the Outstanding Amount of Swing Line Loans is zero and the amount of Revolving Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Increase in Commitments.

(a) Request for Increase. Provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Lenders), the Lead Borrower may from time to time, request an increase in the Aggregate Commitments (or, solely to the extent set forth in Section 2.15(f) below, provide commitments under a new facility constituting a FILO Tranche) by an amount (for all such requests) not exceeding (x) $~~30,000,000~~50,000,000 plus (y) an amount equal to the aggregate principal amount of all permanent commitment reductions of the Aggregate Commitments after the Third Amendment Effective Date plus (z) as of the applicable date of determination, the amount as of such date by which the Borrowing Base exceeds Aggregate Commitments on such date; provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000 (or such lesser amount as to which the Agent may agree in writing), and (ii) the Lead Borrower may make a maximum of three (3) such requests. At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the Persons to whom such requested increase is to be made (and if to any then existing Lender, such request shall be made pro rata to all existing Lenders) and the time period within which each such Person is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to such Persons). Any Person so designated by the Lead Borrower which is not then a Lender shall be subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld, delayed or conditioned).

(b) Elections to Increase. Each Person to whom a request for an increase is made pursuant to clause (a), above, shall notify the Agent within such time period whether or not it agrees to furnish, or as to then existing Lenders increase, its Commitment and, if so, the amount of its Commitment it is willing to furnish or increase. Any Person not responding within such time period shall be deemed to have declined to furnish, or as to then existing Lenders, increase, its Commitment.

(c) Notification by Agent; Additional Commitment Lenders. The Agent shall notify the Lead Borrower of each Person's responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld, delayed or conditioned), to the extent that the Persons so designated by the Lead Borrower pursuant to clause (a) hereof decline to establish, or with respect to then existing Lenders to increase their Commitments, or decline to increase their Commitments to the amount requested by the Lead Borrower, Bank of America will use its reasonable efforts to arrange for other Eligible Assignees to become a Lender hereunder and to issue commitments in an amount equal to the amount of the increase in the Aggregate Commitments requested by the Lead Borrower and not accepted by the Persons so designated (and the Lead Borrower may also invite additional Eligible Assignees to become Lenders), *provided, however,* that without the consent of the Agent, at no time shall the Commitment of any Additional Commitment Lender be less than $5,000,000.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Agent, in consultation with the Lead Borrower, shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Agent shall promptly notify the Lead Borrower and the new (if any) and existing Lenders of the final allocation of such increase and the Increase Effective Date and on the Increase Effective Date (i) the Aggregate Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment increases, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Commitments and Applicable Percentages of the new and existing Lenders.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties (x) specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date or (y) are qualified by materiality in the text thereof, in which case they are true and correct in all respects, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) no Default or Event of Default exists or would arise therefrom, (ii) the Borrowers, the Agent, and any Additional Commitment Lender shall have executed and delivered a joinder to the Loan Documents in such form as the Agent shall reasonably require; (iii) the Borrowers shall have paid such fees and other compensation to the Additional Commitment Lenders as the Lead Borrower and such Additional Commitment Lenders shall reasonably agree; (iv) the Borrowers shall have paid such arrangement fees to Bank of America as the Lead Borrower and the Agent may reasonably agree; (v) if reasonably requested by the Agent, the Borrowers shall deliver an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; (vi) the Borrowers and the Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested; and (vii) no Default or Event of Default exists. The Borrowers shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Percentages arising from any non-ratable increase in the Commitments under this Section.

(f) FILO Tranche. An increase under this Section 2.15 may be in the form of a separate "first-in, last-out" or "last-out" tranche (the "FILO Tranche") with interest rate margins, rate floors, upfront fees, funding discounts and original issue discounts, in each case to be agreed upon (which, for the avoidance of doubt, shall not require any adjustment to the Applicable Rate of other Revolving Loans) among the applicable Borrower and the Lenders providing the FILO Tranche so long as (a) any Loans and related Obligations in respect of the FILO Tranche are not to be guaranteed by any Person other than the Guarantors and are not secured by any assets other than Collateral, (b) as between

(x) the Revolving Loans (other than the FILO Tranche) and (y) the FILO Tranche, all proceeds from the liquidation or other realization of the Collateral or application of funds in accordance with Section 8.03 shall be applied, first to obligations owing under, or with respect to, the Revolving Loans (other than the FILO Tranche) and second to the FILO Tranche; (c) the Borrowers may not prepay Loans under the FILO Tranche or terminate or reduce the commitments in respect thereof at any time that other Loans (including Swing Line Loans) and/or Unreimbursed Amounts (unless cash collateralized or otherwise provided for in a manner reasonably satisfactory to the Agent) are outstanding; (d) any prepayment of the FILO Tranche pursuant to Section 2.05 shall be subject to satisfaction of the Payment Conditions on a *pro forma basis;* (e) the Required Lenders (calculated as including the FILO Tranche) shall, control exercise of remedies in respect of the Collateral; (f) no changes affecting the priority status of this facility (other than the FILO Tranche) vis-à-vis the FILO Tranche may be made without the consent of the Required Lenders under this facility, other than such changes which affect only the FILO Tranche;

(g) the final maturity of any FILO Tranche shall not occur, and no FILO Tranche shall require mandatory commitment reductions prior to, the Latest Maturity Date at such time; and (h) except as otherwise set forth in this Section 2.15(f), the terms of any FILO Tranche are not materially less favorable to the Borrowers than those hereunder (including, without limitation, the inclusion of any additional financial or other material covenant without the consent of the Agent); *provided however*, that advance rates with respect to the items included in the borrowing base for such FILO Tranche shall not exceed 100% of the Appraised Value of Eligible Inventory and 100% of the Appraised Value of Eligible In-Transit Inventory and 100% of Eligible Credit Card Receivables.

(g) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender; fourth, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement (including, without limitation, future Fronting Exposure with respect to such Defaulting Lender with respect to Swing Line Loans) and

(y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(i) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees owing to such Defaulting Lender for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.03(g).

(C) With respect to any fee payable under Section 2.09(i) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or

(B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrowers shall have

otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Outstanding Amount of Obligations (excluding Other Liabilities) of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.03(g).

(b) Defaulting Lender Cure. If the Lead Borrower and the Agent (and, if the applicable Lender is a Lender, the Swing Line Lender and the L/C Issuer) agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.17 Extension of Maturity Date.

(a) Extension of Commitments. The Borrowers may at any time and from time to time request that all or a portion of the Commitments (each, an "Existing Revolver Tranche") be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Commitments (any such Commitments which have been so amended, "Extended Commitments") and to provide for other terms consistent with this Section 2.17; provided that there shall be no more than three (3) tranches of Loans and Commitments outstanding at any time. In order to establish any Extended Commitments, the Lead Borrower shall provide a notice to the Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, an "Extension Request") setting forth the proposed terms (which shall be determined in consultation with the Agent) of the Extended Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Commitments under the Existing Revolver Tranche from which such Extended Commitments are to be amended, except that: (i) the Maturity Date of the Extended Commitments shall be later than the Maturity Date of the Commitments of such Existing Revolver Tranche, (ii) the Extension Amendment

may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Commitments); and (iii) all borrowings under the Commitments and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Commitments (and related outstandings) and (II) repayments required upon the termination date of the non-extending Commitments); provided further, that (A) the conditions precedent to a Borrowing set forth in Section 4.02 shall be satisfied as of the date of such Extension Amendment and at the time when any Loans are made in respect of any Extended Commitment, (B) in no event shall the final maturity date of any Extended Commitments of a given Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Commitments hereunder, and (C) all documentation in respect of the such Extension Amendment shall be consistent with the foregoing. Any Extended Commitments amended pursuant to any Extension Request shall be designated a series (each, an "Extension Series") of Extended Commitments for all purposes of this Agreement; provided that any Extended Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Revolver Tranche. Each Extension Series of Extended Commitments incurred under this Section 2.17 shall be in an aggregate principal amount reasonably acceptable to the Agent.

(b) Extension Request. The Lead Borrower shall provide the applicable Extension Request at least sixty (60) Business Days (or such shorter period as may be agreed by the Agent) prior to the date on which Lenders under the Existing Revolver Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Agent, in each case acting reasonably, to accomplish the purposes of this Section 2.17. No Lender shall have any obligation to agree to provide any Extended Commitment pursuant to any Extension Request. Any Lender (each, an "Extending Lender") wishing to have all or a portion of its Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Commitments shall notify the Agent (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Commitments under the Existing Revolver Tranche which it has elected to request be amended into Extended Commitments (subject to any minimum denomination requirements imposed by the Agent). In the event that the aggregate principal amount of Commitments under the Existing Revolver Tranche in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Commitments requested to be extended pursuant to the Extension Request, Commitments subject to Extension Elections shall be amended to reflect allocations of the Extended Commitments, which Extended Commitments shall be allocated as agreed by the Agent and the Lead Borrower.

(c) New Revolving Commitment Lenders. Following any Extension Request made by the Borrowers in accordance with Sections 2.17(a) and 2.17(b), if the Lenders shall have declined to agree during the period specified in Section 2.17(b) above to provide Extended Commitments in an aggregate principal amount equal to the amount requested by the Borrowers in such Extension Request, the Borrowers may request that Additional Commitment Lenders provide an Extended Commitment hereunder (an "Additional Commitment"); provided that such Extended Commitments of such Additional Commitment Lenders (i) shall be in an aggregate principal amount for all such Additional Commitment Lenders not to exceed the aggregate principal amount of Extended Commitments so declined to be provided by the existing Lenders and (ii) shall be on identical terms to the terms applicable to the terms specified in the applicable Extension Request (and any Extended Commitments provided by existing Lenders in respect thereof); provided further that, as a condition to the effectiveness of any Extended Commitment of any Additional Commitment Lender, the Agent, the L/C Issuer and the Swing Line Lender shall have consented (such consent not to be unreasonably withheld) to each Additional

Commitment Lender if such consent would be required under Section 10.06(b) for an assignment of Commitments to such Person. Notwithstanding anything herein to the contrary, any Extended Commitment provided by Additional Commitment Lenders shall be pro rata to each Additional Commitment Lender. Upon effectiveness of the Extension Amendment to which each such Additional Commitment Lender is a party, (a) the Commitments of all existing Lenders of each Type specified in the Extension Amendment in accordance with this Section 2.17 will be permanently reduced pro rata by an aggregate amount equal to the aggregate principal amount of the Extended Commitments of such Additional Commitment Lenders and (b) the Commitment of each such Additional Commitment Lender will become effective. The Extended Commitments of Additional Commitment Lenders will be incorporated as Commitments hereunder in the same manner in which Extended Commitments of existing Lenders are incorporated hereunder pursuant to this Section 2.17, and for the avoidance of doubt, all Borrowings and repayments of Loans from and after the effectiveness of such Extension Amendment shall be made pro rata across all Types of Commitments including such Additional Commitment Lenders (based on the outstanding principal amounts of the respective Types of Commitments) except for (x) payments of interest and fees at different rates for each Type of Commitments and (y) repayments required on the Maturity Date for any particular Type of Commitments. Upon the effectiveness of each Additional Commitment pursuant to this Section 2.17(c), (a) each Lender of all applicable existing Types of Commitments immediately prior to such effectiveness will automatically and without further act be deemed to have assigned to each Additional Commitment Lender, and each such Additional Commitment Lender will automatically and without further act be deemed to have assumed, a portion of such Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Line Loans held by each Lender of each Type of Commitments (including each such Additional Commitment Lender) will equal the percentage of the aggregate Commitments of all Types of Lenders represented by such Lender's Commitment and (b) if, on the date of such effectiveness, there are any Loans outstanding, such Loans shall on or prior to the effectiveness of such Additional Commitment be prepaid from the proceeds of Loans outstanding after giving effect to such Additional Commitments, which prepayment shall be accompanied by accrued interest on the Loans being prepaid and any costs incurred by any Lender in accordance with Section 3.04. The Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(d) Extension Amendment. Extended Commitments and Additional Commitments shall be established pursuant to an amendment (each, an "Extension Amendment") to this Agreement among the Borrowers, the Agent and each Extending Lender and each Additional Commitment Lender, if any, providing an Extended Commitment or an Additional Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.17(a), (b) and (c) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Agent, receipt by the Agent of (i) legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a Change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Agent and (ii) reaffirmation agreements and/or such amendments to the Security Documents as may be reasonably requested by the Agent in order to ensure that the Extended Commitments or the Additional Commitments, as the case may be, are provided with the benefit of the applicable Loan Documents. The Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other

Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Commitments or the Additional Commitments, as the case may be, incurred pursuant thereto, (ii) make such other changes to this Agreement and the other Loan Documents (without the consent of the Required Lenders) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agent and the applicable Borrower, to effect the provisions of this Section, and the Required Lenders hereby expressly authorize the Agent to enter into any such Extension Amendment.

(e) Treatment as Payment of Loans. No conversion of Loans pursuant to any Extension in accordance with this Section 2.17 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(f) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction on account of Indemnified Taxes been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Lead Borrower or the Agent, as the case may be, after any payment of Taxes by the Lead Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent, at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Lead Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms), establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI (or any successor forms);

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or any successor forms), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Lead Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) 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 Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the 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 Lead Borrower or the Agent as may be necessary for the Lead Borrower and the 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. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Agent in writing of its legal inability to do so.

(f) Mitigation. If any Recipient claims any additional amounts payable pursuant to this Section 3.01, then such Recipient shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrowers) if, in the judgment of such Recipient, such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Recipient, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Recipient. The Borrowers agree to pay all reasonable costs and expenses incurred by any Recipient in connection with any such efforts or measures.

(g) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(h) FATCA. For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of this Agreement, the Borrowers and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(i) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Rate Loans, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Agent, (i) any obligation of such Lender to make or continue LIBOR Rate Loans or to Convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate,

in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, Convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or Conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or Converted.

3.03 Inability to Determine Rates. If ~~the Required Lenders determine that for any reason~~ in connection with any request for a LIBOR Rate Loan or a ~~Conversion~~conversion to or continuation thereof, (i) the Agent determines that (~~a~~A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Rate Loan, ~~(b~~or (B) (x) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan~~, or (c)~~ or in connection with an existing or proposed Base Rate Loan and (y) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Agent or the Required Lenders determine that for any reason the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Rate Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Agent ~~(~~upon ~~the~~ instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have Converted such request into a request for a Revolving Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Agent has made the determination described in clause (i) of Section 3.03(a), the Agent, in consultation with the Lead Borrower and the Required Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (ii) the Agent or the Required Lenders notify the Agent and the Lead Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Agent and the Lead Borrower written notice thereof.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12- month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023, and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) *(x)* Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided 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 Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (1) of the definition of Benchmark Replacement unless the Agent determines that neither of such alternative rates is available.

(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(iii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Lead Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Lead Borrower's receipt of notice from the Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Lead Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(iv) In connection with the implementation and administration of a Benchmark Replacement, the 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.

(v) The Agent will promptly notify the Lead Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent pursuant to this Section 3.03(c), 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, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

3.04 Increased Costs; Reserves on LIBOR Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any LIBOR Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining

any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder , other than an increase related to Taxes, which are governed exclusively by Section 3.01 hereof (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer and delivery of the certificate contemplated by Section 3.04(c), the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then upon delivery of the certificate contemplated by Section 3.04(c), from time to time the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section certifying that such Lender is seeking corresponding compensation from other similarly situated borrowers and delivered to the Lead Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, Conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or Convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any actual loss (as opposed to incidental, consequential, indirect or similar losses) of anticipated profits and any loss or reasonable expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary and reasonable administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Lead Borrower.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender or the L/C Issuer requests compensation under Section 3.04, or the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender, the L/C Issuer, any Participant or any Governmental Authority for the account of any Lender the L/C Issuer or any such Participant pursuant to Section 3.01, or if any Lender, the L/C Issuer or any such Participant gives a notice pursuant to Section 3.02, then such Lender, the L/C Issuer or any such Participant shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender, the L/C Issuer or Participant such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender, L/C Issuer or Participant to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, L/C Issuer or Participant. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender, L/C Issuer or Participant in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

3.08 Designation of Lead Borrower as Borrowers' Agent; Joint and Several Liability.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Credit Extensions so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower ~~hereby assumes, guarantees and agrees to discharge~~shall have joint and several liability in respect of all Obligations, without regard to any defense (other than the defense of payment), setoff or counterclaim which may at any time be available to or be asserted by any other Loan Party against the Credit Parties, or by any other circumstance whatsoever (with or without notice to or knowledge of the Borrowers) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrowers' liability hereunder, in bankruptcy or in any other instance, and such Obligations of the Borrowers shall not be conditioned or contingent upon the pursuit by the Lenders or any other Person at any time of any right or remedy against any Borrower or against any other Person which may be or become liable in respect of all or any part of the Obligations ~~of each~~or against any Collateral or Guaranty therefor or right of offset with respect thereto. Each Borrower hereby acknowledge that this Agreement is the independent and several obligation of each Borrower (regardless of which Borrower shall have delivered a Request for Credit Extension) and may be enforced against each Borrower separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Borrower. Each Borrower hereby expressly waives, with respect to any of the Credit Extensions made to any other ~~Borrowers~~Borrower hereunder and any of the amounts owing hereunder by such other Loan Parties in respect of such Credit Extensions, diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Agent, the L/C Issuer or any Lender exhaust any right, power or remedy or proceed against such other Loan Parties under this Agreement or any other agreement or instrument referred to herein or against any other Person under any other guarantee of, or security for, any of such amounts owing hereunder.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit Extension. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of ~~Effective Date~~Effectiveness of this Agreement. The effectiveness of this Agreement on the Effective Date ~~is~~was subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance reasonably satisfactory to the Agent:

(i) counterparts of this Agreement each properly executed by a Responsible Officer of the signing Loan Party and the Lenders sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) a Note (which may, with respect to Lenders party to the Existing Credit Agreement, take the form of an amended and restated Note), executed by the Borrowers in favor of each Lender requesting a Note (to the extent any such Note or Notes were requested on or before the Effective Date);

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing, and qualified to engage in business in the jurisdiction of its formation, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request (which shall include, among other things, authority, legality, validity, binding effect and enforceability of the Loan Documents, non-contravention and creation and perfection of the Liens on the Collateral in favor of the Agent);

(vi) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.01 and 4.02 have been satisfied, (B) that since January 28, 2017, there has not occurred a Material Adverse Effect, and (C) as to the Solvency of the Loan Parties;

(vii) to the extent not previously delivered in connection with the Existing Credit Agreement, (A) the Security Documents, each duly executed by the applicable Loan Parties, and (B) evidence that certificates evidencing any stock or instruments being pledged under the Security Documents, together with undated stock powers or other documents of transfer executed in blank, have been delivered to the Agent;

(viii) all other Loan Documents, each duly executed by the applicable Loan Parties;

(ix) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, reasonably satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements reasonably satisfactory to the Agent for the delivery of such termination statements, releases, satisfactions and discharges have been made; and

(x) to the extent not previously filed, registered or recorded in connection with the Existing Credit Agreement, all Uniform Commercial Code financing statements and short-form grants of security interest in Intellectual Property, required by Law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the Liens intended to be created under the Loan Documents having the priority intended thereby and all such documents and instruments shall have been so filed, registered or recorded (or arrangements for the same made) to the reasonable satisfaction of the Agent.

(b) On the Effective Date, Availability shall be not less than $40,000,000

(c) The Agent shall have received a Borrowing Base Certificate dated the Effective Date, relating to the month ended on September 30, 2017, and executed by a Responsible Officer of the Lead Borrower.

(d) Since January 28, 2017, there shall not have occurred a "Material Adverse Effect".

(e) All fees required to be paid to the Agent ~~or MLPFS~~ on or before the Effective Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Effective Date shall have been paid in full.

(f) The Borrowers shall have paid all reasonable, documented and accrued fees, charges and disbursements of counsel to the Agent to the extent owing and invoiced at least one Business Day prior to the Effective Date.

(g) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" rules and regulations, including without limitation the Patriot Act, in each case, to the extent requested at least three (3) Business Days prior to the Effective Date (or such shorter period as the Agent may agree in writing).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Revolving Loan Notice requesting only a Conversion of Revolving Loans to the other Type, or a continuation of LIBOR Rate Loans) and of each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects, and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) After giving effect to the Credit Extension requested to be made on any such date and the use of proceeds thereof, Availability shall be greater than zero.

Each Request for Credit Extension (other than a Revolving Loan Notice requesting only a Conversion of Revolving Loans to the other Type or a continuation of LIBOR Rate Loans) submitted by the Lead Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in this Section 4.02 have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, the Required Lenders, otherwise direct the Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and L/C Advances and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which are agreed to by the Agent, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Restricted Subsidiary thereof (a) is duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has (i) all requisite corporate or organizational power and authority and (ii) all requisite governmental licenses, permits, authorizations, consents and approvals to (in the case of clauses (i) and (ii)) (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan

Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (b)(ii) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Third Amendment Effective Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number, if any.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under (i) any Material Contract in excess of $25,000,000 or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Restricted Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, except, in each case referred to in this clause (b), to the extent that any such conflict, breach, termination, contravention, default or payment could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which such Loan Party is a party, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the priority of such Liens contemplated thereby), (b) such as have been obtained or made and are in full force and effect or (c) those the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The financial statements described in Section 6.01(a) and delivered (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The financial statements described in Section 6.01(b) and delivered (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments and purchase accounting adjustments.

(c) Since January 28, 2017, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Consolidated forecasted balance sheet and statements of income and cash flows of the Lead Borrower and its Subsidiaries heretofore or hereafter delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation, provided, that such statements would be subject to normal quarterly and year-end adjustments and the absence of footnotes (it being understood that such forecasted financial information are not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, that no assurance is given that any particular forecasts will be realized, that actual results may differ and that such differences may be material).

5.06 Litigation. Except as specifically disclosed in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, overtly threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Restricted Subsidiaries or against any of its properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.07 Ownership of Property; Liens; Licensed Departments.

(a) Each of the Loan Parties and each Restricted Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business except for (i) such defects in title or failure to have such title or other interest as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as permitted by Section 7.01.

(b) Schedule 5.07(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases) that is owned by the Loan Parties and each of their Restricted Subsidiaries as of the Third Amendment Effective Date, together with a list of the holders of any mortgage or other Lien thereon as of the Third Amendment Effective Date. Schedule 5.07(b)(2) sets forth the address (including street address and state) of all Leases of the Loan Parties, together with the name and address of each lessor with respect to each such Lease as of the Third Amendment Effective Date. Each of such Leases is in full force and effect and the Loan Parties are not in default in any material respect of the terms thereof.

(c) As of the Third Amendment Effective Date, no Loan Party or any of its Restricted Subsidiaries is party to any license for the conduct of licensed departments within the Loan Parties' Stores.

5.08 Environmental Compliance.

(a) No Loan Party or any Restricted Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) knows of any reasonable basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the knowledge of the Loan Parties: (i) none of the properties currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed by any Loan Party or any Restricted Subsidiary thereof on any property currently owned or operated by any Loan Party or any Restricted Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Restricted Subsidiary thereof; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Restricted Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or any Restricted Subsidiary thereof on any property currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party or any Restricted Subsidiary thereof is undertaking, and no Loan Party or any Restricted Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported by any Loan Party or any of its Restricted Subsidiaries to or from, any property currently or formerly owned or operated by any Loan Party or any Restricted Subsidiary thereof have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

5.09 Insurance. The properties of the Loan Parties and their Restricted Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in accordance with the requirements of Section 6.07 hereof.

5.10 Taxes. Except as would not either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Loan Parties and their Restricted Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all material Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Restricted Subsidiary except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

5.11 ERISA Compliance.

(a) Except as could not reasonably be expected to result in a Material Adverse Effect~~.~~: (i) each Plan and Multiemployer Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, and (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination, opinion or advisory letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Lead Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or, to the best knowledge of the Lead Borrower, Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to result in a Material Adverse Effect~~.~~: (i) no ERISA Event has occurred, and neither the Lead Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Lead Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) except as otherwise disclosed in Part (c) of Schedule 5.11, as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Lead Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Lead Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Lead Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.12 Subsidiaries; Equity Interests.

As of the Third Amendment Effective Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.12, which Schedule sets forth, in each case, as of the Third Amendment Effective Date, the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. As of the Third Amendment Effective Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.12. As of the Third Amendment Effective Date, all of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and (if applicable)

non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.12 free and clear of all Liens except for those created under the Security Documents and any non-consensual Lien that is permitted under Section 7.01. Part (d) of Schedule 5.12 identifies, as of the Third Amendment Effective Date, the designation of each Subsidiary as a Restricted Subsidiary, an Unrestricted Subsidiary and/or an Immaterial Subsidiary.

5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock.

(b) None of the Loan Parties is an "investment company" under the Investment Company Act of 1940.

5.14 Disclosure. No report, financial statement, certificate or other information furnished (in writing) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date such information was provided to the Agent and the Lenders; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information is subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrowers, that no assurance is given that any particular projections will be realized, that actual results may differ and that such differences may be material). As of the Third Amendment Effective Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all material respects.

5.15 Compliance with Laws. Each of the Loan Parties and each Restricted Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.16 Intellectual Property; Licenses, Etc. The Loan Parties and their Restricted Subsidiaries own, or possess the right to use through one or more licenses, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses as currently conducted, and, to the best knowledge of the Loan Parties, without conflict with the rights of any other Person other than conflicts, which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Restricted Subsidiary infringes upon any rights held by any other Person which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No claim or litigation against any Loan Party alleging any such infringement regarding any of the foregoing is pending or, to the best knowledge of the Lead Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.17 Labor Matters.

There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Restricted Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened in writing that could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties comply in all material respects with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party or any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law that could reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party and its Restricted Subsidiaries, or for which any valid claim may be made against any Loan Party or any of its Restricted Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.17, as of the Third Amendment Effective Date, no Loan Party or any Restricted Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement (solely with respect to employees holding a senior executive level position or above), bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. As of the Third Amendment Effective Date, there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board or any other Governmental Authority, and no labor organization or group of employees of any Loan Party or any Restricted Subsidiary has made a pending demand for recognition. As of the Third Amendment Effective Date, there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Restricted Subsidiary pending or, to the knowledge of any Loan Party, threatened in writing to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Restricted Subsidiaries except, for such complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints as could not reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Restricted Subsidiaries is bound.

5.18 Security Documents.

The Security Agreement, together with such filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to the Agent of any Pledged Collateral (as defined in the Security Agreement) required to be delivered pursuant hereto or the applicable Security Documents) creates in favor of the Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the priority, perfection or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of any Credit Party with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant hereto or the applicable Security Documents.

5.19 Solvency.

On the Third Amendment Effective Date after giving effect to the transactions contemplated by this Agreement, the Loan Parties, on a Consolidated basis, are Solvent.

5.20 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.20(a) is a list of all DDAs maintained by the Loan Parties as of the Third Amendment Effective Date (other than local level store DDAs), which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.20(b) is a list describing all arrangements as of the Third Amendment Effective Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.21 Sanctions Concerns and Anti-Corruption Laws.

(a) No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, controlled affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar restricted parties list enforced by any other sanctions authority with applicable jurisdiction or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation, and to the knowledge of each Borrower, the Loan Parties and their Subsidiaries are in compliance with applicable anti-corruption laws and applicable Sanctions in all material respects.

5.22 EEA Financial Institutions.

No Loan Party is an EEA Financial Institution.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than the Other Liabilities and contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Restricted Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) as soon as available, but in any event within one hundred twenty (120) days after the end of each Fiscal Year of the Lead Borrower , a Consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case, in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Lead Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Material Indebtedness or (ii) any actual or prospective breach of any financial maintenance covenant);

(b) as soon as available, but in any event within forty-five (45) days (or, with respect to the Fiscal Quarter ending May 4, 2019, within sixty (60) days) after the end of each of the Fiscal Quarters of each Fiscal Year of the Lead Borrower, a Consolidated balance sheet of Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, and cash flows for such Fiscal Quarter and for the portion of the Lead Borrower's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, and cash flows of the Lead Borrower and its Restricted Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments, purchase accounting adjustments and the absence of footnotes;

(c) as soon as available, but in any event within thirty (30) days after the end of each of the first two (2) Fiscal Months of each Fiscal Quarter of the Lead Borrower, a Consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Month, and the related Consolidated statements of income or operations, and cash flows for such Fiscal Month, and for the portion of the Lead Borrower's Fiscal Year then ended, setting in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, and cash flows of Lead Borrower and its Restricted Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments, purchase accounting adjustments and the absence of footnotes;

(d) as soon as available, but in any event no more than sixty (60) days after the end of each Fiscal Year of Holdings, forecasts prepared by management of the Lead Borrower, in form reasonably satisfactory to the Agent, of (i) Availability, and (ii) of the Consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Restricted Subsidiaries, each of the foregoing on a monthly basis for the immediately following Fiscal Year, which forecasts, in each case, shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such forecasts (it being understood that any such forecasts are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan and that no assurance can be given that any particular forecasts will be realized, that actual results may differ and that such differences may be material).

(e) Notwithstanding the foregoing, the obligations referred to in Sections 6.01(a) through 6.01(c) may be satisfied with respect to financial information of the Lead Borrower and its Restricted Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Lead Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); provided that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a Parent Company of the Lead Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Lead Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(a) (it being understood that such information may be audited at the option of the Lead Borrower), such materials are accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Lead Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Material Indebtedness or (ii) any actual or prospective breach of any financial maintenance covenant).

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, (ii) in the event of any change in GAAP used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP, and (iii) a copy of management's discussion and analysis with respect to such financial statements;

(c) on the twentieth (20th) day of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Borrowing Base and Availability as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower; provided that, without limiting the Agent's rights set forth in the last proviso of this clause (c), at any time that an Accelerated Borrowing Base Delivery Event has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday;

(d) [reserved],

(e) [reserved];

(f) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(g) [reserved];

(h) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(i) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Restricted Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Restricted Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect; and

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b), or (c) or Section 6.02(d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent ~~and/or MLPFS~~ will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent, ~~MLPFS,~~ the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non- public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent ~~and MLPFS~~ shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default (including, without limitation, any breach or non-performance of, or any default under, or with respect to Material Indebtedness of any Loan Party or any Restricted Subsidiary thereof to the extent such breach or non-performance results in a Default or Event of Default hereunder);

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect,

(c) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Restricted Subsidiary thereof and any Governmental Authority; or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Restricted Subsidiary thereof, including pursuant to any applicable Environmental Laws, in each case that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) of the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect;

(e) ~~of the filing of any Lien for unpaid federal income Taxes against any Loan Party in excess of $3,000,000~~[reserved]; and

(f) of any failure by any Loan Party to pay rent as and when required by the applicable Lease if such failure could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with reasonable particularity the provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities, in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation (i) except in a transaction permitted by Section 7.04 or 7.05, or (ii) except (other than with respect to the preservation of the legal existence of the Lead Borrower) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except in a transaction permitted by Section 7.04 or 7.05 and except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except, to the extent: (i) such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties, (ii) pursuant to a transaction permitted by Section 7.04 or 7.05, or (iii) that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, in either case except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance

Maintain insurance with insurance companies that the Lead Borrower (in the good faith judgment of its management team) believes are financially sound and reputable with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or ~~similar business~~ Similar Business and operating in the same or similar locations or as is required by Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent), and furnish the Lenders, upon written request from the Agent, with information presented in reasonable detail as to the insurance so carried. Each such policy of insurance will as appropriate, (i) name the Agent, on behalf of the Credit Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional lender loss payable clause or endorsement that names the Agent, on behalf of the Credit Parties, as the additional lender loss payee thereunder. Each such policy of insurance will as appropriate also provide that it shall not be canceled, modified or not renewed except upon prior written notice thereof by the insurer to the Agent in accordance with the notice provisions set forth in the applicable policy.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP, (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) Maintain proper books of record and account, in which true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Loan Parties or such Restricted Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Restricted Subsidiary, as the case may be.

6.10 Inspection Rights.

(a) Upon the request of the Agent after reasonable prior notice and at reasonable times during normal business hours, permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm (subject to such accountants' customary procedures) (provided that the Lead Borrower shall be given the opportunity to participate in any such discussions), all at the expense of the Loan Parties and at such reasonable times during normal business hours, but no more than one (1) time per twelve (12) month period, upon reasonable advance notice to the Lead Borrower, provided, however, that upon the occurrence and during the continuance of an Event of Default, the Agent (or any of its representatives or independent contractors) may do any of the foregoing after reasonable prior notice and at reasonable times as often as may be reasonably desired at the expense of the Loan Parties at any time during normal business hours.

(b) Upon the request of the Agent after reasonable prior notice and at reasonable times, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations of the Loan Parties, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base, (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Loan Parties' business plan, forecasts and cash flows. The parties hereto agree that the Agent may, in its discretion, after reasonable prior notice and at reasonable times, undertake (and, subject to the immediately succeeding sentence, shall be limited to) (A) up to one (1) commercial finance examination in each twelve month period at the Loan Parties' expense; provided that if Availability is less than the greater of (x) twenty percent (20%) of the Loan Cap, and (y) ~~$10,000,000~~12,500,000, in either case for five (5) consecutive Business Days, the Agent may, in its discretion, undertake up to two (2) commercial finance examinations in the immediately succeeding twelve month period at the Loan Parties' expense, and (B) up to one (1) additional commercial finance examination in each twelve month period at the Lenders' expense. Notwithstanding the foregoing, if required by Law or if a Specified Event of Default shall have occurred and be continuing, after reasonable prior notice and at reasonable times, the Agent may cause additional commercial finance examinations to be undertaken at the expense of the Loan Parties.

(c) Upon the request of the Agent after reasonable prior notice and at reasonable times, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base. The parties hereto agree that the Agent may, in its discretion, after reasonable prior notice and at reasonable times, undertake (and, subject to the immediately succeeding sentence, shall be limited to) (A) up to one (1) inventory appraisal in each twelve month period at the Loan Parties' expense; provided, that if Availability is less than the greater of (x) twenty percent (20%) of the Loan Cap, and (y) $~~10,000,000~~12,500,000 , in either case, for five (5) consecutive Business Days, the Agent may, in its discretion, undertake up to two (2) inventory appraisals in the immediately succeeding twelve month period at the Loan Parties' expense, and (B) up to one (1) additional inventory appraisal in each twelve month period at the Lenders' expense. Notwithstanding the foregoing, (i) if required by Law or if a Specified Event of Default shall have occurred and be continuing, after reasonable prior notice and at reasonable times, the Agent may cause additional appraisals to be undertaken at the expense of the Loan Parties, and (ii) the Agent may cause an additional desktop inventory appraisal to be undertaken within 180 days following the Loan Parties' implementation of the cost method of valuation of Inventory at the expense of the Loan Parties in accordance with Section 7.13.

6.11 Additional Loan Parties.

(a) (i) Notify the Agent at the time that any Person becomes a Wholly-Owned Subsidiary of any Loan Party, and promptly thereafter (and in any event within sixty (60) days or such longer period as the Agent may agree), cause any such Person which is a Domestic Subsidiary (other than any Excluded Subsidiary) to (x) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem reasonably appropriate for such purpose, (y) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations to the extent required by the Security Documents, and (z) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and, if reasonably requested by the Agent, customary opinions of counsel to such Person, and (ii) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, notwithstanding the foregoing, if any Subsidiary is a Foreign Subsidiary or a Foreign Subsidiary Holding Company, the Equity Interests of such Subsidiary to be pledged shall be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary), in each case in form, content and scope reasonably satisfactory to the Agent. For the avoidance of doubt and notwithstanding anything herein or in any Security Document to the contrary, none of the assets of any Foreign Subsidiary or any Foreign Subsidiary Holding Company (including any Equity Interests held by a Foreign Subsidiary) shall be required to be pledged hereunder or under any Security Document.

(b) In no event shall compliance with this Section 6.11 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or Guarantor or permit the inclusion of any acquired assets or assets of such Subsidiary in the computation of the Borrowing Base.

(c) Notwithstanding anything to the contrary contained herein, if the Agent reasonably determines that the cost of obtaining any pledge or security interest otherwise required pursuant to this Section 6.11 is excessive in relation to the benefit thereof, then no such pledge or security interest shall be required hereunder.

6.12 Cash Management.

(a) (i) To the extent not previously delivered ~~pursuant to the Existing Credit Agreement, on or~~ prior to the Third Amendment Effective Date, deliver to the Agent copies of notifications (each, a "Credit Card Notification") reasonably satisfactory in form and substance to the Agent which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.20(b); and (ii) to the extent not previously delivered ~~pursuant~~prior to the ~~Existing Credit Agreement within ninety (90) days following the Effective Date (or such later date to which the Agent may agree in writing in its Permitted Discretion)~~Third Amendment Effective Date, enter into a Blocked Account Agreement reasonably satisfactory in form and substance to the Agent with each Blocked Account Bank (collectively, the "Blocked Accounts").

(b) ACH or wire transfer no less frequently than once each Business Day (or with such other frequency as the Agent may otherwise agree in its sole discretion), whether or not there are then any outstanding Obligations to a Blocked Account (i) all available amounts on deposit in each DDA that is not a Blocked Account (other than any Excluded Account) (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such DDAs consistent with past practices), and (ii) all payments received from all Credit Card Issuers and Credit Card Processors.

(c) After the occurrence and during the continuance of a Cash Dominion Event, cause the ACH or wire transfer to the collection account maintained by the Agent at Bank of America (the "Collection Account"), no less frequently than once each Business Day (or with such other frequency as the Agent may otherwise agree in its sole discretion), whether or not there are then any outstanding Obligations, all cash receipts and collections received by each Loan Party from all sources, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory (including without limitation, proceeds of credit card charges) and other assets (whether or not constituting Collateral);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event;

(iv) the then available cash balance of each Blocked Account (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such Blocked Accounts consistent with past practices); and

(v) the then available cash balance of each DDA (other than any Excluded Account and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) not described in clause (iv) (except for normal course allowances for deposit errors, returned checks and other similar items maintained in such DDAs consistent with past practices).

(d) The Collection Account shall at all times during the continuance of a Cash Dominion Event be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) during the continuance of a Cash Dominion Event, the Loan Parties have no right of withdrawal from the Collection Account, (ii) the funds on deposit in the Collection Account shall at all times be collateral security for all of the Obligations, and (iii) during the continuance of a Cash Dominion Event, the funds on deposit in the Collection Account shall be applied to the Obligations as provided in Section 2.05(f) or Section 8.03, as applicable. In the event that, notwithstanding the provisions of this Section 6.12, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections (other than any amounts in any Excluded Accounts), such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Collection Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

6.13 Information Regarding the Collateral. Furnish to the Agent at least thirty (30) days after written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office or its principal place of business; (iii) any Loan Party's organizational type or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

6.14 Physical Inventories.

(a) Cause not less than one (1) physical inventory to be undertaken with respect to the Loan Parties' distribution centers and Store locations, at the expense of the Loan Parties, in each Fiscal Year (provided that at the Loan Parties' option, periodic cycle counts may be performed in lieu of such annual physical inventory at its distribution centers or any Store locations), in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent, as applicable, with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within forty-five (45) days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) to the extent that the results thereof reflect a material discrepancy from the Loan Parties' stock ledger or general ledger and shall, in any event, post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) Permit the Agent, in its discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines in its Permitted Discretion (each, at the expense of the Loan Parties).

6.15 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws; (b) obtain and renew all environmental permits reasonably necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are reasonably required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, except, in case of each of the foregoing causes, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to establishing or modifying Reserves in the manner permitted by this Agreement.

6.16 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, amendments to financing statements and other documents), that may be required under any Law, or which the Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect (to the extent required by, and subject to the limitations set forth in, the Security Documents and this Agreement) the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority (subject only to Permitted Encumbrances having priority by operation of applicable law) Lien under the Security Documents upon acquisition thereof and other than Equity Interests in a Foreign Subsidiary or a Foreign Subsidiary Holding Company not required to be pledged pursuant to Section 6.11 hereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a perfected Lien securing the Obligations and will take such actions as shall be reasonably necessary or shall be reasonably requested by any Agent to grant and perfect (to the extent required by, and subject to the limitations set forth in, the Security Documents and this Agreement) such Liens, including actions described in paragraph (a) of this Section 6.16, all at the expense of the Loan Parties. Notwithstanding the foregoing, the Loan Parties shall not be required to grant a mortgage in favor of the Agent on any owned Real Estate of any Loan Party.

6.17 Compliance with Terms of Leaseholds.

Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Restricted Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except to the extent such Lease is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Restricted Subsidiaries to do the foregoing, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.18 Designation of Subsidiaries.

The ~~board~~Board of ~~directors~~Directors of Holdings may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) after giving effect to such designation, the Payment Conditions shall have been satisfied, (iii) none of the Borrowers may be designated as an Unrestricted Subsidiary, (iv) no Unrestricted Subsidiary shall own any Equity Interests in the Lead Borrower its Restricted Subsidiaries, (v) no Unrestricted Subsidiary shall hold any Indebtedness of, or any Lien on any property of, the Lead Borrower and its Restricted Subsidiaries, (vii) the holder of any Indebtedness of any Unrestricted Subsidiary shall not have any recourse to the Lead Borrower and its Restricted Subsidiaries with respect to such Indebtedness and (vii) no Unrestricted Subsidiary shall be a party to any transaction or arrangement with the Lead Borrower and its Restricted Subsidiaries that would not be permitted by Section 7.09. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by Holdings and its Restricted Subsidiaries therein at the date of designation in an amount equal to the net book value of Holdings' or Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

6.19 Sanctions.

Not directly or, knowingly, indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Agent, L/C Issuer or otherwise) of Sanctions.

6.20 Anti-Corruption Laws.

Not directly or, knowingly, indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977 or any applicable anti-corruption legislation in other jurisdictions.

~~**6.21 Post-Closing Covenant.**~~

~~As promptly as practicable and in any event within the time periods after the Effective Date specified in Schedule 6.21 or such later day as the Agent agrees to in writing, deliver the documents or take the actions specified in Schedule 6.21.~~

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than the Other Liabilities and contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), no Loan Party shall, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or authorize under the UCC or any applicable Law or statute of any jurisdiction a financing statement that names any Loan Party or any Restricted Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Restricted Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income or grant any Liens on its assets, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except Permitted Investments; provided that, if any such Permitted Investment is made in a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the Borrowing Base, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.03 Indebtedness; Disqualified Stock.

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness, or (b) issue Disqualified Stock.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, (including, in each case, pursuant to a Division) (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge or consolidate with or into (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided that when any Wholly-Owned Subsidiary is merging or consolidating with another Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge with or consolidate into any other Subsidiary which is a Loan Party or into a Borrower, provided that in any merger involving a Borrower, a Borrower shall be the continuing or surviving Person;

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided that (i) the Person surviving such merger shall be a Wholly-Owned Subsidiary of a Loan Party and such Person shall become a Loan Party in accordance with the provisions of Section 6.11 hereof, and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(d) any Subsidiary which is not a Borrower may liquidate or dissolve if the Lead Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Lead Borrower and is not materially disadvantageous to the Credit Parties.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each of the following shall be permitted:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party (other than Holdings);

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person (in each case other than Disqualified Stock);

(c) the Loan Parties may declare and pay cash dividends to Holdings in an amount not to exceed such amount as is necessary to permit Holdings to pay its proportionate share of ~~(i)~~ :

(i) reasonable and customary corporate and operating expenses (including reasonable out-of-pocket expenses for legal, administrative and accounting services provided by third parties, and compensation, benefits and other amounts payable to officers and employees in connection with their employment in the ordinary course of business), ~~(ii)~~

(ii) tax liabilities attributable to the taxable income of the Lead Borrower and its Subsidiaries for any taxable period in which the Lead Borrower and its Subsidiaries is a member of any affiliated, consolidated, combined or unitary group the common parent of which is Holdings, ~~and (iii)~~

(iii) franchise fees or similar taxes and fees required to maintain its corporate existence~~;~~ and

(iv) following a Qualifying IPO, any costs and expenses in connection with becoming or continuing to exist as a public company (including Public Company Costs).

(d) any Loan Party may declare and pay cash dividends to Holdings not to exceed an amount necessary to permit Holdings to pay customary indemnities and reasonable ordinary course expenses attributable to Holdings, the Lead Borrower or its respective Subsidiaries to the Sponsor pursuant to the Sponsor Management Agreement;

(e) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties and their Subsidiaries may make Restricted Payments in an amount not to exceed $5,000,000 (increasing to $20,000,000 in any fiscal year following a Qualifying IPO by the Borrower or any Parent Company) in the aggregate per Fiscal Year to Holdings to permit Holdings or its parent to repurchase, redeem or otherwise acquire Equity Interests issued by it (and, so long as no Default or Event of Default then exists or would result therefrom, Holdings may use the proceeds of such Restricted Payments for such purpose); ~~and~~

(f) if the RP Conditions are satisfied, the Lead Borrower may declare or pay cash dividends to Holdings (and, so long as the RP Conditions are satisfied, Holdings may use the proceeds of such Restricted Payments to make Restricted Payments to the holders of Holdings' Equity Interests);

(g) the Third Amendment Effective Date Distribution;

(h) Restricted Payments to Holdings or any Loan Party in connection with any IPO Reorganization Transaction; and

(i) the declaration and payment of dividends on the Borrower' common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company's common equity), following the first public offering of the Borrower' common equity or the common equity of any Parent Company after the Closing Date that is a Qualifying IPO, in an amount not to exceed the greater of (a) 7.0% per annum of the net cash proceeds received by or contributed to the Borrower other than any public sale constituting an Excluded Contribution and (b) 6.0% per annum of the Market Capitalization at the time of declaration of such Restricted Payment; provided that no Event of Default pursuant to Section 8.01(a) or 8.01(f) (solely with respect to the Borrower) shall have occurred and be continuing or would result therefrom.

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Junior Indebtedness, except (a) regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), (ii) Subordinated Indebtedness in accordance with the subordination terms thereof; provided that if any Specified Event of Default (or event, with the passage of time, the giving of notice or both would constitute a Specified Event of Default) then exists or would arise therefrom, the Loan Parties and their Subsidiaries may not utilize proceeds of Credit Extensions or Proceeds of Collateral to make any such repayments, repurchases, redemptions or defeasances described in this clause (a), (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness) as long as the Payment Conditions are satisfied, (ii) Subordinated Indebtedness ~~(other than the Intercompany Subordinated Indebtedness)~~ in accordance with the subordination terms thereof and as long as the Payment Conditions are satisfied, and (iii) ~~the Intercompany Subordinated Indebtedness as long as the RP Conditions are satisfied~~[reserved]; and (c) Permitted Refinancings of any such Indebtedness.

7.08 Change in Nature of Business.

(a) In the case of Holdings, engage in any line of business substantially different from the business conducted by Holdings on the Closing Date.

(b) In the case of any Loan Party other than Holdings, engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

~~(c) Without the written consent of the Required Lenders, create, acquire or maintain any Domestic Subsidiary other than a Wholly-Owned Subsidiary.~~

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party involving aggregate payments or consideration in excess of $3.0 million, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable, taken as a whole, to the Loan Parties or such Restricted Subsidiary as would be obtainable by the Loan Parties or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate or, if in the good faith judgment of the ~~board~~Board of ~~directors~~Directors no comparable transaction is available with which to compare such transaction, such transaction is otherwise fair to the Loan Parties or such Restricted Subsidiary from a financial point of view, provided that the foregoing restriction shall not apply to :

(a) a transaction between or among the Loan Parties and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction,

(b) transactions described on Schedule 7.09 hereto,

(c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees,

(d) the payment of reasonable fees and out-of-pocket costs to directors and officers, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Lead Borrower or any of its Restricted Subsidiaries,

(e) transactions among the Loan Parties and the Sponsor to the extent permitted pursuant to Section 7.06,

(f) as long as no Change of Control results therefrom, any issuances of securities of Holdings (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in Holdings) of Holdings or any of its Subsidiaries,

(g) (i) Restricted Payments permitted by Section 7.06, and (ii) any Permitted Investment(s) or any acquisition otherwise permitted hereunder,

(h) transactions in which the Borrowers or any Restricted Subsidiary, as the case may be, delivers to the Agent a letter from an independent financial advisor stating that such transaction is fair to the Loan Parties or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Loan Parties or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Loan Parties or such Restricted Subsidiary with a Person that is not an Affiliate of the Loan Parties on an arm's length basis,

(i) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Loan Parties and the Restricted Subsidiaries, in the reasonable determination of the ~~board~~Board of ~~directors~~Directors or the senior management of the Lead Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(j) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Lead Borrower or any parent company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Lead Borrower,

(k) payments by the Loan Parties or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the ~~board~~Board of ~~directors~~Directors in good faith,

(l) (i) investments by Affiliates in securities of the Lead Borrower (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Lead Borrower generally to other investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities of the Lead Borrower contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Lead Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities,

(m) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto),

(n) any lease entered into between the Loan Parties or any Restricted Subsidiary, as lessee and any Affiliate of the Borrowers, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the ~~board~~Board of ~~directors~~Directors or senior management of the Lead Borrower in good faith,

(o) intellectual property licenses in the ordinary course of business or consistent with industry practice,

(p) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Lead Borrower or any parent company pursuant to the equity holders agreement or the registration rights agreement entered into on or after the Effective Date,

(q) transactions permitted by, and complying with, Section 7.04 solely for the purpose of (a) ~~reorganizing to facilitate any initial public offering of securities of the Lead Borrower or any parent company~~an IPO Reorganization Transaction, (b) forming a holding company or (c) reincorporating the Lead Borrower in a new jurisdiction,

(r) transactions undertaken in good faith (as determined by the ~~board~~Board of ~~directors~~Directors or certified by senior management of the Lead Borrower) for the purposes of improving the consolidated tax efficiency of the Borrowers and their Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Credit Parties, when taken as a whole, in each case, as determined in good faith by the ~~board~~Board of ~~directors~~Directors or certified by senior management of the Lead Borrower in an officer's certificate,

(s) (i) transactions with a Person that is an Affiliate of the Lead Borrower (other than an Unrestricted Subsidiary) solely because the Loan Parties or any Restricted Subsidiary owns, directly or indirectly, Equity Interests in such Person and (ii) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Loan Parties, any Restricted Subsidiary or any parent company,

(t) (i) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (ii) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Lead Borrower or a parent company and

(~~v~~u) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Lead Borrower.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document or any Term Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party or any Subsidiary, except for (x) at the time any Subsidiary becomes a Subsidiary of any Borrower, so long as such agreement was not entered into primarily in contemplation of such Person becoming a Subsidiary of such Borrower, (y) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder or (z) customary provisions in leases and other contracts and agreements restricting the assignment thereof, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (d) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; (b) customary anti-assignment provisions in contracts restricting the assignment thereof or in contracts for the Disposition of any assets or any Subsidiary provided that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be Disposed of; or (c) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person unless such Lien is a Permitted Encumbrance.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or knowing, indirectly, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, or (b) for any purposes other than (i) the acquisition of working capital assets in the ordinary course of business, (ii) to finance Capital Expenditures, Permitted Investments and Restricted Payments of the Loan Parties, and (iii) for general corporate purposes, in each case to the extent not prohibited by applicable Law or the Loan Documents.

7.12 Amendment of Material Documents.

Amend, modify or change ~~(a)~~ in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Lead Borrower (on the basis of such proposed amendments, modifications or changes taken as a whole), any term or condition of any Junior Indebtedness that is Material Indebtedness (other than (i) ~~the Intercompany Subordinated Indebtedness~~[reserved] or (ii) as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Agent (which consent shall not be unreasonably withheld or delayed); *provided*, *however*, that no amendment, modification or change of any term or condition of any such Junior Indebtedness permitted by any subordination provisions set forth in the applicable Junior Indebtedness or any other stand-alone subordination agreement in respect thereof and, in each case consented to by the Agent shall be deemed to be materially adverse to the interests of the Lenders~~, or (b) the Intercompany Subordinated Indebtedness, to the extent that such amendment, modification or waiver is materially adverse to the Credit Parties~~.

7.13 Fiscal Year; Accounting Changes.

Change the Fiscal Year of any Loan Party without the prior written consent of the Agent, or change in any material respect the accounting policies or reporting practices of the Loan Parties (it being agreed that any change that materially affects the calculation of the Cost of Eligible Inventory included in the Borrowing Base or the calculation of the Consolidated Fixed Charge Coverage Ratio is such a change), except as required by GAAP and except that the Loan Parties may change their inventory valuation methods from the retail valuation method to the cost method of valuation of Inventory, provided that (i) the Loan Parties shall have provided the Agent with at least ten (10) days' prior written notice of such change in method, and (ii) the Agent may, in its Permitted Discretion and at the Loan Parties' expense, undertake an appraisal of the Loan Parties' inventory after giving effect to the implementation of the cost method of valuation, as provided in the last sentence of Section 6.10(c).

7.14 Deposit Accounts; Credit Card Processors.

Open new DDAs with a Blocked Account Bank (other than any Excluded Accounts and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) or enter into any agreements with Credit Card Issuers or Credit Card Processors unless the Loan Parties shall have delivered to the Agent appropriate Blocked Account Agreements or Credit Card Notifications, as applicable, consistent with the provisions of Section 6.12 and otherwise satisfactory to the Agent.

Without the consent of the Agent (not to be unreasonably withheld or delayed), no Loan Party shall maintain any bank accounts with any Blocked Account Bank (other than any Excluded Accounts and any disbursement accounts designated by the Lead Borrower and used solely for such purpose) or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.12 hereof.

7.15 Consolidated Fixed Charge Coverage Ratio.

During the continuance of a Covenant Compliance Event, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each Fiscal Quarter (commencing with the Fiscal Quarter immediately prior to the date that the Covenant Compliance Event occurs) for the Measurement Period then ended, to be less than 1.00:1.00.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal on any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, (ii) any interest on any Loan or on any L/C Obligation, or any fee due hereunder within three (3) Business Days after the same becomes due, or (iii) any other amount (excluding Other Liabilities) payable hereunder or under any other Loan Document within five (5) Business Days after the due date thereof; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.02(c) (after a three (3) Business Day grace period when required to be delivered monthly and two (2) Business Day grace period when required to be delivered weekly; provided that during such grace period the Borrowers shall not be permitted to make any Borrowings under this Agreement), 6.03(a), 6.05(a) (solely with respect to the Lead Borrower, other than in a transaction permitted under Section 7.04 or 7.05), 6.12 (during the continuance of a Cash Dominion Event, but otherwise subject to a three (3) Business Day grace period to the extent that such default is capable of being cured), Article VII (other than Section 7.15) or the Borrowers fail to perform or observe the covenant contained in Section 7.15; *provided* that an Event of Default pursuant to Section 7.15 shall not occur until the expiration of the Cure Deadline without the consummation of the Cure Right; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a), or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days, in each case, following receipt by the Lead Borrower of written notice from the Agent or the Required Lenders of any such failure; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made (or, if qualified by materiality in the text thereof, in any respect when made or deemed made); or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided, that, in the case of clause (B), a default under the Financial Covenants (as defined in the Term Loan Credit Agreement) in the Term Loan Credit Agreement shall not constitute a Default or Event of Default under this Agreement unless and until the earlier of (x) sixty (60) days after such default under the Term Loan Credit Agreement or (y) the lenders under the Term Loan Credit Agreement shall have accelerated the Term Loan Obligations and such acceleration shall not have been rescinded, or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the

appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within forty-five (45) days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such final judgments and orders) exceeding $10,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) such judgment is not, within thirty (30) days after the entry thereof, satisfied, vacated, discharged or execution thereof stayed or bonded pending appeal; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which results or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC and which could reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan, which could reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason (other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations), ceases to be in full force and effect; or any Loan Party or any Restricted Subsidiary thereof contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party or any Restricted Subsidiary thereof denies in writing that it has any or further liability or obligation under any material provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted in writing by any Loan Party or any Restricted Subsidiary thereof not to be, a valid and perfected Lien on any material portion of the Collateral (to the extent required by the Security Documents and this Agreement) perfected Lien on any Collateral (other than an immaterial portion of the Collateral), with the priority required by the applicable Security Document (subject to Permitted Encumbrances); or

(k) Change of Control. There occurs any Change of Control; or

(l) [Reserved];

(m) Loss of Collateral. There occurs any uninsured loss to any of the Collateral, which loss could reasonably be expected to have a Material Adverse Effect; or

(n) [Reserved];

(o) Guaranty. The termination, revocation or attempted termination or revocation in writing by any Loan Party of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(p) Subordination. (i) The subordination or intercreditor provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in writing in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, (i) at any time that there are only two (2) Lenders and a Specified Event of Default exists, at the request of any Lender (so long as such Lender is a Lender as of the Effective Date and maintains a Commitment not less than the Commitment of such Lender as of the Effective Date), or (ii) in all other circumstances, at the request of the Required Lenders, shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligations shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations (excluding Other Liabilities not then due and payable) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties (to the extent permitted by applicable Law);

(c) if so requested by the Required Lenders, require that the Loan Parties Cash Collateralize the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

provided, however, that upon the occurrence of any Default or Event of Default with respect to any Loan Party or any Restricted Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans, all interest accrued thereon and all other Obligations shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Obligations have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received from any Loan Party, from the liquidation of any Collateral, or on account of the Obligations shall, subject to the provisions of Section 2.16, be applied by the Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities (including indemnities due under Section 10.03 hereof), Credit Party Expenses and other amounts (including reasonable and documented fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities (including indemnities due under Section 10.03 hereof), Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer (including Credit Party Expenses to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fourth, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting principal and accrued and unpaid interest on the Swing Line Loans;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Loans and L/C Borrowings, and fees (including Letter of Credit Fees and Commitment Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Eighth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.11, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of that portion of the Obligations arising from Cash Management Services, ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations arising from Bank Products, ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Seventh above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section 8.03.

8.04 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 8.01(b), in the event that the Borrowers fail to comply with the requirement of the Financial Covenant, Holdings or any other Person designated by the Borrowers shall have the right (1) at any time during the period beginning at the start of the last fiscal quarter of the applicable Measurement Period and ending on or prior to the tenth (10^{th}) Business Day after the date on which financial statements with respect to the Measurement Period in which such covenant is being measured are required to be delivered pursuant to Section 6.01 or (2) within ten (10) Business Day after the beginning of a Covenant Compliance Event (such later date, the "Cure Deadline"), to make a direct or indirect equity investment in the Lead Borrower in cash in the form of common Equity Interests (or any other form reasonably acceptable to the Agent) (the "Cure Right"), and upon the receipt by the Lead Borrower of net cash proceeds pursuant to the exercise of the Cure Right (the "Cure Amount"), the Financial Covenant shall be recalculated, giving effect to a pro forma increase to Consolidated EBITDA for such Measurement Period in an amount equal to such Cure Amount; provided that such pro forma adjustment to Consolidated EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under the Financial Covenant with respect to any Measurement Period that includes the fiscal quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document.

(b) If, after the receipt of the Cure Amounts and the recalculations pursuant to clause (2) above, the Borrowers shall then be in compliance with the requirements of the Financial Covenant during such Measurement Period, the Borrowers shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; *provided* that (i) the Cure Right may be exercised on no more than five (5) occasions, (ii) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Cure Right is exercised, (iii) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Borrowers to be in pro forma compliance with the Financial Covenant (such amount, the "Necessary Cure Amount") (*provided* that if the Cure Right is exercised prior to the date financial statements are required to be delivered for such fiscal quarter then the Cure Amount shall be equal to the amount reasonably determined by the Lead Borrower in good faith that is required for purposes of complying with the Financial Covenant for such fiscal quarter (such amount, the "Expected Cure Amount"), (iv) subject to clause (3) below, all Cure Amounts shall be disregarded for purposes of determining any baskets or financial ratio calculations (other than with respect to the Financial Covenant), with respect to the covenants contained in the Loan Documents and (v) there shall be no pro forma or other reduction in Indebtedness (by netting or otherwise) with the proceeds of any Cure Amount for determining compliance with the Financial Covenant for the fiscal quarter for which such Cure Amount is deemed applied unless such proceeds are actually applied to prepay Indebtedness.

(c) Notwithstanding anything herein to the contrary, (A) to the extent that the Expected Cure Amount is (i) greater than the Necessary Cure Amount, then such difference may be used for the purposes of determining any baskets (other than any previously contributed Cure Amounts), with respect to the covenants contained in the Loan Documents and (ii) *less* than the Necessary Cure Amount, then not later than the applicable Cure Deadline, the Lead Borrower must receive a direct or indirect equity investment in cash in the form of common Equity Interests (or other forms reasonably acceptable to the Agent), which cash proceeds received by Lead Borrower shall be equal to the shortfall between such Expected Cure Amount and such Necessary Cure Amount and (B) prior to the Cure Deadline (x) the Lenders shall not be permitted to exercise any rights then available as a result of an Event of Default under Section 8.02 on the basis of a breach of the Financial Covenant so as to enable the Borrowers to consummate their Cure Rights as permitted under this Section 8.04 and (y) the Lenders shall not be required to make any Credit Extension unless and until the Lead Borrower has received the Cure Amount required to cause the Borrowers to be in compliance with the Financial Covenant.

ARTICLE IX
THE AGENT

9.01 Appointment and Authority.

Each of the Lenders (in its capacity as a Lender), the Swing Line Lender and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral

granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the other Credit Parties, and no Loan Party or any Restricted Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the 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 as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Restricted Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent or any Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent or the Arrangers, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; ~~and~~

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity; and

(d) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein.

The Agent shall not be liable to any Credit Party for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties, a Lender or the L/C Issuer. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders (excluding, for purposes of this Section 9.06 only, any Lender who is also the Agent) shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States and which shall, unless an Event of Default has occurred and is continuing at the time of such appointment, be reasonably acceptable to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders (and accepted by the Lead Borrower in accordance with the terms above) and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender and ~~the~~each L/C Issuer expressly acknowledges that none of the Agent nor any Arranger has made any representation or warranty to it, and that no act by the Agent or any Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agent or any Arranger to any Lender or each L/C Issuer as to any matter, including whether the Agent or any Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to the Agent and the Arrangers that it has, independently and without reliance upon the Agent ~~or~~, the Arrangers, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis ~~and~~of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and

creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunning Manager or Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent, a Lender or the L/C Issuer hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i), 2.03(j), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Credit Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Credit Party or to authorize the Agent to vote in respect of the claim of any Credit Party in any such proceeding.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted and for Obligations collateralized pursuant to Section 10.11) and the expiration, termination or Cash Collateralization of all Letters of Credit (except to the extent fully Cash Collateralized or supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Agent), (ii) that is Disposed of or to be Disposed of as part of or in connection with any Disposition permitted hereunder, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to release any Lien on any Equity Interests of any Subsidiary of the Lead Borrower granted to or held by the Agent under the Security Agreement in the event that Rule 3-16 of Regulation S-X under applicable Securities Laws is amended, modified or interpreted by the SEC to require (or is replaced with another rule or regulation or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental ~~Agency~~Authority) of separate financial statements of such Subsidiary due to the fact that such Subsidiary's Equity Interests secure the Obligations, but only for so long as, and only to the extent, necessary to not be subject to such requirement;

(c) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(d) to release any Guarantor from its obligations under any Facility Guaranty and each other applicable Loan Document if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty and each other applicable Loan Document pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and Lien granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer.

The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements.

By signing this Agreement, each Lender:

(a) agrees to furnish the Agent, at such frequency as the Agent may reasonably request, with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and if such notice is received, the Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all Borrowing Base Certificates and financial statements required to be delivered by the Lead Borrower hereunder

(c) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(d) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Borrowing Base Certificates, financial statements or Reports, and shall not be liable for any information contained in any Borrowing Base Certificate, financial statement or Report;

(e) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(f) agrees to keep all Borrowing Base Certificates, financial statements and Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(g) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection.

Each Credit Party hereby appoints each other Credit Party as agent for the purpose of perfecting Liens for the benefit of the Credit Parties, in assets which, in accordance with Article 9 of the UCC or any other Law of the United States can be perfected only by possession or control. Should any Credit Party (other than the Agent) obtain possession or control of any such Collateral, such Credit Party shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of Loan Parties hereunder, the Lenders shall indemnify the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, any sub-agent thereof, the Swing Line Lender, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, any sub-agent's, the Swing Line Lender's, the L/C Issuer's and their Related Parties' bad faith, gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

9.16 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Agent makes a payment hereunder in error to any Lender or any other Credit Party, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount. Notwithstanding anything to the contrary herein or in any other Loan Document, the provisions of this paragraph are solely agreements among the Credit Parties and the Agent and shall not impose any obligations on the Borrowers or the other Loan Parties.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc.

(a) ~~No~~Subject to Section 3.03(c) and except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of each Lender directly and adversely affected thereby, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Commitments hereunder or under any other Loan Document, without the written Consent of each Lender directly and adversely affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of any Lender, without the written Consent of each Lender directly and adversely affected thereby; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(iv) change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of each Lender;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof or of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written Consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.10, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(viii) change the definition of the term "Borrowing Base" (or any component definition thereof, including, without limitation, advance rates, eligible asset classes and eligibility criteria), "Reserves," "Availability Reserves," or "Inventory Reserves" if, in any case, as a result thereof, the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, *provided that* the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves or eligibility criteria as provided herein;

(ix) modify the definition of the term "Permitted Overadvance" so as to increase the amount thereof or, except as otherwise provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and

(x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or under the other Loan Documents to any other Indebtedness without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document; and (iv) the Fee ~~Letter~~Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) any Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party, and (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender (other than the Agent) does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender or each affected Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and, with respect to electronic communications, except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet , except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Revolving Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties, except to the extent such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, or (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13); and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the reasonable fees, charges and documented out-of-pocket disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit and any other Person seeking to

enforce the rights of a Borrower, beneficiary, transferee, or assignee or Letter of Credit proceeds or the holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Restricted Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Restricted Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Lead Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Lead Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) Payments. All amounts due under this Section shall be payable on demand therefor.

(e) Limitation of Liability. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the L/C Issuer or the Swing Line Lender, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

10.05 Payments Set Aside. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Loan Party for liquidation or reorganization or otherwise under any Debtor Relief Law, should any Loan Party become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver, interim receiver, trustee, monitor, custodian, conservator, liquidator, rehabilitator or similar officer be appointed for all or any significant part of any Loan Party's assets, and shall continue to be effective or to be reinstated, as the

case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) (1) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Revolving Loans owing to it or (2) in the case of any assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment or, if the Commitment is not then in effect, the principal outstanding balance of the Revolving Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower shall be required (such consent not to be unreasonably withheld, conditioned or delayed; provided that after the passage of ten (10) Business Days from receipt of written notice to the Lead Borrower from the Agent of a proposed assignment without the Lead Borrower giving the Agent written notice of the Lead Borrower's objection to such assignment, the Lead Borrower shall be deemed to have consented to such assignment) unless (1) a Default or Event of Default under Section 8.01(a) or 8.01(f) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(B) the consent of the Agent, the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (1) (A) to any Person which is not an Eligible Assignee, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person, or (2) if at the time of such assignment the Borrowers would be obligated to pay any greater amount under Article III to the assignee than the Borrowers is then obligated to pay to the assigning Lender under such Article (and if any assignment is made in violation of the foregoing, the Borrowers will not be required to pay such greater amounts).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Lead Borrower and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request of the assignee Lender, the Borrowers (at their expense) shall execute and deliver one or more Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). No assignment shall be effective unless it has been recorded in the Register pursuant to this Section 10.06(c). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice This Section 10.06(c) shall be construed so that the Obligations (excluding Other Liabilities) are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any regulations promulgated thereunder (and any other relevant or successor provisions of the Code or such regulations).

(d) Participations. (i) Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment, and/or the Revolving Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (iv) and clauses (vi) and (vii) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.02 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may, at any time and without consent of any Loan Party or the Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Assignment to SPV. Notwithstanding any provision to the contrary, any Lender may assign to one or more special purpose funding vehicles (each, an "SPV") all or any portion of its funded Loans (without the corresponding Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Lender and such SPV, and may grant any such SPV the option, in such SPV's sole discretion, to provide the Borrowers all or any part of any Loans that such Lender would otherwise be obligated to make pursuant to this Agreement. Such SPVs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Lender making such assignment shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by the principal amount of any Loans held by an SPV). Notwithstanding such assignment, the Agent and Lead Borrower may deliver notices to the Lender making such assignment (as agent for the SPV) and not separately to the SPV unless the Agent and Lead Borrower are requested in writing by the SPV (or its agent) to deliver such notices separately to it. The Borrowers shall, at the reasonable request of any such Lender, execute and deliver to such Person as such Lender may designate, one or more Notes in the amount of such Lender's original Notes to evidence the Loans of such Lender and related SPV.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment or Resignation. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, or resigns as Agent in accordance with the provisions of Section 9.06, Bank of America may, (i) upon thirty (30) days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) with duplication of any notice required under Section 9.06, upon thirty (30) days' notice to the Lead Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit, and (c) the successor Swing Line Lender shall repay all outstanding Obligations with respect to Swing Line Loans due to the resigning Swing Line Lender.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement (including any electronic agreement contained in any Platform) containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract relating to any Loan Party and its obligations, (g) with the prior written consent of the Lead Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non- confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, provided it exercises not less than reasonable care.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, each Participant, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) (other than escrow, payroll, petty cash, trust and tax accounts) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Participant, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or

unmatured or are owed to a branch or office of such Lender, such Participant, or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Participant, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the "Maximum Rate"). If the 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 and other Obligations (other than Other Liabilities not then due and owing) or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous letters of intent, commitment letters, agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than the Other Liabilities and contingent indemnity obligations for which claims have not been asserted) hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations (other than contingent indemnity obligations for which claims have not been asserted), the expiration or termination of the Letters of Credit and the Commitments or the

termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent, in its Permitted Discretion, may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Obligations that may thereafter arise under Section 10.04 hereof.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees (except that accrued fees shall not be payable to a Defaulting Lender) and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF.

(b) SUBMISSION TO JURISDICTION. SUBJECT TO THE LAST SENTENCE OF THIS CLAUSE (B), EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO (OR, IN THE CASE OF THE LOAN PARTIES, AGAINST ANY RELATED PARTY OF THE AGENT, ANY LENDER OR THE L/C ISSUER), IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING TO ENFORCE ANY AWARD OR JUDGMENT RIGHT UNDER THE LOAN DOCUMENTS OR TO BRING ANY ACTION OR PROCEEDING TO ENFORCE ITS RIGHTS UNDER THE LOAN DOCUMENTS WITH RESPECT TO ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party 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; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Patriot Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with Patriot ~~the~~ Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or the UK Bribery Act 2010. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

10.18 Foreign Asset Control Regulations. None of the advance of the Loans, the issuance of any Letters of Credit or the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of OFAC (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Patriot Act. Furthermore, none of the Borrowers or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or otherwise associated, with any such "blocked person" or in any manner violative of any such order.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event solely to the extent permitted by applicable Law, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) The Agent and each Lender agree that such Person shall not in the future issue any press releases or other public disclosure using the name of the Lead Borrower or its Subsidiaries without at least two (2) Business Days' prior notice to the Agent and the Lead Borrower and without the prior written consent of the Agent and the Lead Borrower unless such Credit Party or Affiliate is required to do so under applicable Law or an Event of Default has occurred and is then continuing. Subject to the foregoing, each Loan Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark with the Lead Borrower's consent (to the extent required pursuant to the immediately preceding sentence), which consent (if so required) shall not be unreasonably withheld, conditioned or delayed; provided that after the passage of five (5) Business Days

from receipt of written notice to the Lead Borrower from the Agent or any Lender of a proposed press release or other public disclosure without the Lead Borrower giving the Agent written notice of the Lead Borrower's objection to such press release or other public disclosure, the Lead Borrower shall be deemed to have consented thereto); provided further that the Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party, or (iv) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the payment in full in cash of all the Obligations after the termination of the Commitments). The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise.

(b) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all of the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. To the extent permitted by applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(c) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all of the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously

be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(d) Without limiting the generality of the foregoing, or of any other waiver or other provision set forth in this Agreement, each Loan Party hereby absolutely, knowingly, unconditionally, and expressly waives any and all claim, defense or benefit arising directly or indirectly under any one or more of Sections 2787 to 2855 inclusive of the California Civil Code or any similar law of California.

10.22 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.23 Attachments.

The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and schedules and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 Electronic Execution of Assignments and Certain Other Documents.

(a) The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New

York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it.

(b) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent and each of the Credit Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Agent has agreed to accept such Electronic Signature, the Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10.25 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the guaranty set forth in the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Facility Guaranty voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor

under this Section 10.25 shall remain in full force and effect until the Obligations have been indefeasibly paid in full. Each Loan Party intends this Section to constitute, and this Section 10.25 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

10.26 Acknowledgment and Consent to Bail-In of ~~EEA~~Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an ~~EEA~~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~~Write-Down And Conversion Powers of an ~~EEA~~applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an ~~EEA~~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 ~~EEA~~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~~Write-Down and ~~conversion powers~~Conversion Powers of any ~~EEA~~applicable Resolution Authority.

10.27 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract 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):

(a) 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.

10.28 ~~10.27~~ Amendment and Restatement.

This Agreement is an amendment and restatement of the Existing Credit Agreement, it being acknowledged and agreed that as of the Effective Date all obligations outstanding under or in connection with the Existing Credit Agreement and any of the other Loan Documents (such obligations, collectively, the "Existing Obligations") constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Existing Credit Agreement or the Existing Obligations. With respect to (i) any date or time period occurring and ending prior to the Effective Date, the Existing Credit Agreement and the other Loan Documents shall govern the respective rights and obligations of any party or parties hereto also party thereto and shall for such purposes remain in full force and effect; and (ii) any date or time period occurring or ending on or after the Effective Date, the rights and obligations of the parties hereto shall be governed by this Agreement (including, without limitation, the exhibits and schedules hereto) and the other Loan Documents. From and after the Effective Date, any reference to the Existing Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Existing Credit Agreement.

10.29 ABL Intercreditor Agreement.

Each of Loan Parties, the Agent, the L/C Issuers and the Lenders acknowledge that the exercise of certain of the Agent's rights and remedies hereunder and under the other Loan Documents may be subject to, and restricted by, the provisions of the ABL Intercreditor Agreement. Except as specified herein, nothing contained in the ABL Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Agent, the L/C Issuers and the Lenders shall remain in full force and effect. In the event of any conflict between the terms of the ABL Intercreditor Agreement and the terms of this Agreement, the terms of the ABL Intercreditor Agreement shall govern and control.

[remainder of page intentionally left blank; signature pages follow]

Annex B

Exhibits to Credit Agreement

[Please see attached.]

Annex C

Schedules to Credit Agreement

[Please see attached.]

Exhibit 10.18

RESTRICTED STOCK AGREEMENT
PURSUANT TO THE
TORRID HOLDINGS INC. 2021 LONG-TERM INCENTIVE PLAN

* * * * *

Participant: _____

Grant Date: _____

Number of Shares of

Restricted Stock Granted: _____

* * * * *

THIS RESTRICTED STOCK AWARD AGREEMENT (this "Agreement"), dated as of the Grant Date specified above, is entered into by and between Torrid Holdings Inc., a Delaware corporation (the "Company"), and the Participant specified above, pursuant to the Torrid Holdings Inc. 2021 Long-Term Incentive Plan, as in effect and as amended from time to time (the "Plan"), which is administered by the Committee; and

WHEREAS, it has been determined under the Plan that it would be in the best interests of the Company to grant the shares of Restricted Stock provided herein to the Participant.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. **Incorporation By Reference; Plan Document Receipt**. This Agreement is subject in all respects to the terms and provisions of the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms and provisions are made a part of and incorporated in this Agreement as if they were each expressly set forth herein. Any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and that the Participant has read the Plan carefully and fully understands its content. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

2. **Grant of Restricted Stock Award**. The Company hereby grants to the Participant, as of the Grant Date specified above, the number of shares of Restricted Stock specified above. Except as otherwise provided by the Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant's interest in the Company for any reason, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such shares, except as otherwise specifically provided for in the Plan or this Agreement. Subject to Section 5 hereof, the Participant shall not have the rights of a stockholder in respect of the shares underlying this Award until such shares are delivered to the Participant in accordance with Section 4 hereof.

3. **Vesting**.

(a) Subject to the provisions of Sections 3(b) and 3(c) hereof, the Restricted Stock subject to this grant shall become unrestricted and vested as follows, provided that the Participant has not incurred a Termination prior to each such vesting date:

Vesting Date	Number of Shares
[•]	[•]

There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date, subject to the Participant's continued service with the Company or any of its Subsidiaries on each applicable vesting date.

(b) Committee Discretion to Accelerate Vesting. Notwithstanding the foregoing, the Committee may, in its sole discretion, provide for accelerated vesting of the Restricted Stock at any time and for any reason.

(c) Forfeiture. Subject to the Committee's discretion to accelerate vesting hereunder, all unvested shares of Restricted Stock shall be immediately forfeited upon the Participant's Termination for any reason.

4. **Period of Restriction; Delivery of Unrestricted Shares**. During the Period of Restriction, the Restricted Stock shall bear a legend as described in Section 10 below. When shares of Restricted Stock awarded by this Agreement become vested, the Participant shall be entitled to receive unrestricted shares and if the Participant's stock certificates contain legends restricting the transfer of such shares, the Participant shall be entitled to receive new stock certificates free of such legends (except any legends requiring compliance with securities laws).

5. **Dividends and Other Distributions; Voting**. Participants holding Restricted Stock shall be entitled to receive all dividends and other distributions paid with respect to such shares, provided that any such dividends or other distributions will be subject to the same vesting requirements as the underlying Restricted Stock and shall be paid at the time the Restricted Stock becomes vested pursuant to Section 3 hereof. If any dividends or distributions are paid in shares, the shares shall be deposited with the Company and shall be subject to the same restrictions on transferability and forfeitability as the Restricted Stock with respect to which they were paid. The Participant may exercise full voting rights with respect to the Restricted Stock granted hereunder.

6. **Non-Transferability**. The shares of Restricted Stock, and any rights and interests with respect thereto, issued under this Agreement and the Plan shall not, prior to vesting, be sold, exchanged, transferred, assigned or otherwise disposed of in any way by the Participant (or any beneficiary of the Participant), other than by testamentary disposition by the Participant or the laws of descent and distribution. Any attempt to sell, exchange, transfer, assign, pledge, encumber or otherwise dispose of or hypothecate in any way any of the Restricted Stock, or the levy of any execution, attachment or similar legal process upon the Restricted Stock, contrary to the terms and provisions of this Agreement and/or the Plan shall be null and void and without legal force or effect.

7. **Governing Law**. All questions concerning the construction, validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof.

8. **Withholding of Tax**. The Company shall have the power and the right to deduct or withhold, or require the Participant to remit to the Company, an amount sufficient to satisfy any federal, state, local and foreign taxes of any kind (including, but not limited to, the Participant's FICA and SDI obligations) which the Company, in its sole discretion, deems necessary to be withheld or remitted to comply with the Code and/or any other applicable law, rule or regulation with respect to the Restricted Stock and, if the Participant fails to do so, the Company may otherwise refuse to issue or transfer any shares of Common Stock otherwise required to be issued pursuant to this Agreement. Any minimum statutorily required withholding obligation with regard to the Participant may be satisfied by reducing the amount of cash or shares of Common Stock otherwise deliverable to the Participant hereunder.

9. **Section 83(b)**. If the Participant properly elects (as required by Section 83(b) of the Code) within 30 days after the issuance of the Restricted Stock to include in gross income for federal income tax purposes in the year of issuance the Fair Market Value of such shares of Restricted Stock, the Participant shall pay to the Company or make arrangements satisfactory to the Company to pay to the Company upon such election, any federal, state or local taxes required to be withheld with respect to the Restricted Stock. If the Participant shall fail to make such payment, the Company shall, to the extent permitted by law, have the right to deduct from any payment of any kind otherwise due to the Participant any federal, state or local taxes of any kind required by law to be withheld with respect to the Restricted Stock, as well as the rights set forth in Section 8 hereof. The Participant acknowledges that it is the Participant's sole responsibility, and not the Company's, to file timely and properly the election under Section 83(b) of the Code and any corresponding provisions of state tax laws if the Participant elects to make such election, and the Participant agrees to timely provide the Company with a copy of any such election.

10. **Legend**. All certificates representing the Restricted Stock shall have endorsed thereon the legend substantially in the following form:

"The anticipation, alienation, attachment, sale, transfer, assignment, pledge, encumbrance or charge of the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the Torrid Holdings Inc. (the "Company") 2021 Long-Term Incentive Plan Incentive Plan (the "Plan") and an Agreement entered into between the registered owner and the Company dated _____. Copies of such Plan and Agreement are on file at the principal office of the Company."

Notwithstanding the foregoing, in no event shall the Company be obligated to deliver to the Participant a certificate representing the Restricted Stock prior to the vesting dates set forth above.

11. **Securities Representations**. The shares of Restricted Stock are being issued to the Participant and this Agreement is being made by the Company in reliance upon the following express representations and warranties of the Participant. The Participant acknowledges, represents and warrants that:

(a) The Participant has been advised that the Participant may be an "affiliate" within the meaning of Rule 144 under the Securities Act and in this connection the Company is relying in part on the Participant's representations set forth in this Section 11.

(b) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the shares of Restricted Stock must be held indefinitely unless an exemption from any applicable resale restrictions is available or the Company files an additional registration statement (or a "re-offer prospectus") with regard to the shares of Restricted Stock and the Company is under no obligation to register the shares of Restricted Stock (or to file a "re-offer prospectus").

(c) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the Participant understands that (i) the exemption from registration under Rule 144 will not be available unless (A) a public trading market then exists for the Common Stock of the Company, (B) adequate information concerning the Company is then available to the public, and (C) other terms and conditions of Rule 144 or any exemption therefrom are complied with, and (ii) any sale of the shares of vested Restricted Stock hereunder may be made only in limited amounts in accordance with the terms and conditions of Rule 144 or any exemption therefrom.

12. **Entire Agreement; Amendment**. This Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. This Agreement may also be modified or amended by a writing signed by both the Company and the Participant. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

13. **Notices**. Any notice hereunder by the Participant shall be given to the Company in writing and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing and such notice shall be deemed duly given only upon receipt thereof at such address as the Participant may have on file with the Company.

14. **Acceptance**. The Participant shall forfeit the Restricted Stock if the Participant does not execute this Agreement within a period of sixty (60) days from the date that the Participant receives this Agreement (or such other period as the Committee shall provide).

15. **No Right to Employment**. Any questions as to whether and when there has been a Termination and the cause of such Termination shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause.

16. **Transfer of Personal Data**. The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the Restricted Stock awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan). This authorization and consent is freely given by the Participant.

17. **Compliance with Laws**. The issuance of the Restricted Stock or unrestricted shares pursuant to this Agreement shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law or regulation applicable thereto. The Company shall not be obligated to issue the Restricted Stock or any of the shares pursuant to this Agreement if any such issuance would violate any such requirements.

18. **Section 409A**. Notwithstanding anything herein or in the Plan to the contrary, the shares of Restricted Stock are intended to be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent.

19. **Binding Agreement; Assignment**. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns. The Participant shall not assign (except in accordance with Section 6 hereof) any part of this Agreement without the prior express written consent of the Company.

20. **Headings**. The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

21. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

22. **Further Assurances**. Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

23. **Severability**. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

24. **Acquired Rights**. The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the award of Restricted Stock made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the Restricted Stock awarded hereunder) give the Participant any right to any grants or awards in the future whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary salary, and shall not be considered as part of such salary in the event of severance, redundancy or resignation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TORRID HOLDINGS INC.

By: _____

Name:

Title:

PARTICIPANT

_____

Name:

Exhibit 10.19

RESTRICTED STOCK UNIT AGREEMENT
PURSUANT TO THE
TORRID HOLDINGS INC. 2021 LONG-TERM INCENTIVE PLAN

* * * * *

Participant:_____

Grant Date:_____

Number of Restricted Stock Units Granted:_____

* * * * *

THIS RESTRICTED STOCK UNIT AWARD AGREEMENT (this "Agreement"), dated as of the Grant Date specified above, is entered into by and between Torrid Holdings Inc., a Delaware corporation (the "Company"), and the Participant specified above, pursuant to the Torrid Holdings Inc. 2021 Long-Term Incentive Plan, as in effect and as amended from time to time (the "Plan"), which is administered by the Committee; and

WHEREAS, it has been determined under the Plan that it would be in the best interests of the Company to grant the Restricted Stock Units ("RSUs") provided herein to the Participant.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. **Incorporation By Reference; Plan Document Receipt**. This Agreement is subject in all respects to the terms and provisions of the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms and provisions are made a part of and incorporated in this Agreement as if they were each expressly set forth herein. Any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and that the Participant has read the Plan carefully and fully understands its content. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

2. **Grant of Restricted Stock Unit Award**. The Company hereby grants to the Participant, as of the Grant Date specified above, the number of RSUs specified above. Except as otherwise provided by the Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant's interest in the Company for any reason, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of the shares of Common Stock underlying the RSUs, except as otherwise specifically provided for in the Plan or this Agreement.

3. **Vesting**.

(a) Subject to the provisions of Sections 3(b) and 3(c) hereof, the RSUs subject to this Award shall become vested as follows, provided that the Participant has not incurred a Termination prior to each such vesting date:

Vesting Date	Number of RSUs
[•]	[•]

There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date, subject to the Participant's continued service with the Company or any of its Subsidiaries on each applicable vesting date.

(b) Committee Discretion to Accelerate Vesting. Notwithstanding the foregoing, the Committee may, in its sole discretion, provide for accelerated vesting of the RSUs at any time and for any reason.

(c) Forfeiture. Subject to the Committee's discretion to accelerate vesting hereunder, all unvested RSUs shall be immediately forfeited upon the Participant's Termination for any reason.

4. **Delivery of Shares**.

(a) General. Subject to the provisions of Sections 4(b) and 4(c) hereof, within thirty (30) days following the vesting of the RSUs, the Participant shall receive the number of shares of Common Stock that correspond to the number of RSUs that have become vested on the applicable vesting date; provided that the Participant shall be obligated to pay to the Company the aggregate par value of the shares of Common Stock to be issued within ten (10) days following the issuance of such shares unless such shares have been issued by the Company from the Company's treasury.

(b) Blackout Periods. If the Participant is subject to any Company "blackout" policy or other trading restriction imposed by the Company on the date such distribution would otherwise be made pursuant to Section 4(a) hereof, such distribution shall be instead made on the earlier of (i) the date that the Participant is not subject to any such policy or restriction and (ii) the later of (A) the end of the calendar year in which such distribution would otherwise have been made and (B) a date that is immediately prior to the expiration of two and one-half months following the date such distribution would otherwise have been made hereunder.

(c) Deferrals. If permitted by the Company, the Participant may elect, subject to the terms and conditions of the Plan and any other applicable written plan or procedure adopted by the Company from time to time for purposes of such election, to defer the distribution of all or any portion of the shares of Common Stock that would otherwise be distributed to the Participant hereunder (the "Deferred Shares"), consistent with the requirements of Section 409A of the Code. Upon the vesting of RSUs that have been so deferred, the applicable number of Deferred Shares shall be credited to a bookkeeping account established on the Participant's behalf (the "Account"). Subject to Section 5 hereof, the number of shares of

Common Stock equal to the number of Deferred Shares credited to the Participant's Account shall be distributed to the Participant in accordance with the terms and conditions of the Plan and the other applicable written plans or procedures of the Company, consistent with the requirements of Section 409A of the Code.

5. **Dividends; Rights as Stockholder**. Cash dividends on shares of Common Stock issuable hereunder shall be credited to a dividend book entry account on behalf of the Participant with respect to each RSU granted to the Participant, provided that such cash dividends shall not be deemed to be reinvested in shares of Common Stock and shall be held uninvested and without interest and paid in cash at the same time that the shares of Common Stock underlying the RSUs are delivered to the Participant in accordance with the provisions hereof. Stock dividends on shares of Common Stock shall be credited to a dividend book entry account on behalf of the Participant with respect to each RSU granted to the Participant, provided that such stock dividends shall be paid in shares of Common Stock at the same time that the shares of Common Stock underlying the RSUs are delivered to the Participant in accordance with the provisions hereof. Except as otherwise provided herein, the Participant shall have no rights as a stockholder with respect to any shares of Common Stock covered by any RSU unless and until the Participant has become the holder of record of such shares.

6. **Non-Transferability**. No portion of the RSUs may be sold, assigned, transferred, encumbered, hypothecated or pledged by the Participant, other than to the Company as a result of forfeiture of the RSUs as provided herein, unless and until payment is made in respect of vested RSUs in accordance with the provisions hereof and the Participant has become the holder of record of the vested shares of Common Stock issuable hereunder.

7. **Governing Law**. All questions concerning the construction, validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof.

8. **Withholding of Tax**. The Company shall have the power and the right to deduct or withhold, or require the Participant to remit to the Company, an amount sufficient to satisfy any federal, state, local and foreign taxes of any kind (including, but not limited to, the Participant's FICA and SDI obligations) which the Company, in its sole discretion, deems necessary to be withheld or remitted to comply with the Code and/or any other applicable law, rule or regulation with respect to the RSUs and, if the Participant fails to do so, the Company may otherwise refuse to issue or transfer any shares of Common Stock otherwise required to be issued pursuant to this Agreement. Any minimum statutorily required withholding obligation with regard to the Participant may be satisfied by reducing the amount of cash or shares of Common Stock otherwise deliverable to the Participant hereunder.

9. **Legend**. The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of Common Stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares of Common Stock acquired pursuant to this Agreement in the possession of the Participant in order to carry out the provisions of this Section 9.

10. **Securities Representations**. This Agreement is being entered into by the Company in reliance upon the following express representations and warranties of the Participant. The Participant hereby acknowledges, represents and warrants that:

(a) The Participant has been advised that the Participant may be an "affiliate" within the meaning of Rule 144 under the Securities Act and in this connection the Company is relying in part on the Participant's representations set forth in this Section 10.

(b) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the shares of Common Stock issuable hereunder must be held indefinitely unless an exemption from any applicable resale restrictions is available or the Company files an additional registration statement (or a "re-offer prospectus") with regard to such shares of Common Stock and the Company is under no obligation to register such shares of Common Stock (or to file a "re-offer prospectus").

(c) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the Participant understands that (i) the exemption from registration under Rule 144 will not be available unless (A) a public trading market then exists for the Common Stock of the Company, (B) adequate information concerning the Company is then available to the public, and (C) other terms and conditions of Rule 144 or any exemption therefrom are complied with, and (ii) any sale of the shares of Common Stock issuable hereunder may be made only in limited amounts in accordance with the terms and conditions of Rule 144 or any exemption therefrom.

11. **Entire Agreement; Amendment**. This Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. This Agreement may also be modified or amended by a writing signed by both the Company and the Participant. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

12. **Notices**. Any notice hereunder by the Participant shall be given to the Company in writing and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing and such notice shall be deemed duly given only upon receipt thereof at such address as the Participant may have on file with the Company.

13. **No Right to Employment**. Any questions as to whether and when there has been a Termination and the cause of such Termination shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or its Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause.

14. **Transfer of Personal Data**. The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the RSUs awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan). This authorization and consent is freely given by the Participant.

15. **Compliance with Laws**. The grant of RSUs and the issuance of shares of Common Stock hereunder shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law, rule regulation or exchange requirement applicable thereto. The Company shall not be obligated to issue the RSUs or any shares of Common Stock pursuant to this Agreement if any such issuance would violate any such requirements. As a condition to the settlement of the RSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation.

16. **Binding Agreement; Assignment**. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns. The Participant shall not assign (except in accordance with Section 6 hereof) any part of this Agreement without the prior express written consent of the Company.

17. **Headings**. The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

18. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

19. **Further Assurances**. Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

20. **Severability**. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

21. **Acquired Rights**. The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the Award of RSUs made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the RSUs awarded hereunder) give the Participant any right to any grants or awards in the future whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary salary, and shall not be considered as part of such salary in the event of severance, redundancy or resignation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TORRID HOLDINGS INC.

By: _____

Name: _____

Title: _____

PARTICIPANT

_____

Name: _____

Exhibit 10.20

NONQUALIFIED STOCK OPTION AGREEMENT
PURSUANT TO THE
TORRID HOLDINGS INC. 2021 LONG-TERM INCENTIVE PLAN
* * * * *

Participant:_____

Grant Date:_____

Per Share Exercise Price: $_____

Number of Shares subject to this Option:_____

* * * * *

THIS NON-QUALIFIED STOCK OPTION AWARD AGREEMENT (this "Agreement"), dated as of the Grant Date specified above, is entered into by and between Torrid Holdings Inc., a Delaware corporation (the "Company"), and the Participant specified above, pursuant to the Torrid Holdings Inc. 2021 Long-Term Incentive Plan, as in effect and as amended from time to time (the "Plan"), which is administered by the Committee; and

WHEREAS, it has been determined under the Plan that it would be in the best interests of the Company to grant the Non-Qualified Stock Option provided for herein to the Participant.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. **Incorporation By Reference; Plan Document Receipt**. This Agreement is subject in all respects to the terms and provisions of the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms and provisions are made a part of and incorporated in this Agreement as if they were each expressly set forth herein. Any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and that the Participant has read the Plan carefully and fully understands its content. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control. No part of the Option granted hereby is intended to qualify as an "incentive stock option" under Section 422 of the Code.

2. **Grant of Option**. The Company hereby grants to the Participant, as of the Grant Date specified above, a Non-Qualified Stock Option (this "Option") to acquire from the Company at the Per Share Exercise Price specified above, the aggregate number of shares of Common Stock specified above (the "Option Shares"). Except as otherwise provided by the

Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant's interest in the Company for any reason. The Participant shall have no rights as a stockholder with respect to any shares of Common Stock covered by the Option unless and until the Participant has become the holder of record of such shares, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such shares, except as otherwise specifically provided for in the Plan or this Agreement.

3. **Vesting and Exercise**.

(a) Vesting. Subject to the provisions of Section 3(b) hereof, the Option shall vest and become exercisable as follows, provided that the Participant has not incurred a Termination prior to each such vesting date:

Vesting Date	**Number of Shares**
[•]	**[•]**

There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date, subject to the Participant's continued service with the Company or any of its Subsidiaries on each applicable vesting date. Upon expiration of the Option, the Option shall be cancelled and no longer exercisable.

(b) Committee Discretion to Accelerate Vesting. Notwithstanding the foregoing, the Committee may, in its sole discretion, provide for accelerated vesting of the Option at any time and for any reason.

(c) Expiration. Unless earlier terminated in accordance with the terms and provisions of the Plan and/or this Agreement, all portions of the Option (whether vested or not vested) shall expire and shall no longer be exercisable after the expiration of ten (10) years from the Grant Date.

4. **Termination**. Subject to the terms of the Plan and this Agreement, the Option, to the extent vested at the time of the Participant's Termination, shall remain exercisable as follows:

(a) Termination due to Death or Disability. In the event of the Participant's Termination by reason of death or Disability, the vested portion of the Option shall remain exercisable until the earlier of (i) one (1) year from the date of such Termination, and (ii) the expiration of the stated term of the Option pursuant to Section 3(c) hereof; provided, however, that in the case of a Termination due to Disability, if the Participant dies within such one (1) year exercise period, any unexercised Option held by the Participant shall thereafter be exercisable by the legal representative of the Participant's estate, to the extent to which it was exercisable at the time of death, for a period of one (1) year from the date of death, but in no event beyond the expiration of the stated term of the Option pursuant to Section 3(c) hereof.

(b) Involuntary Termination Without Cause. In the event of the Participant's involuntary Termination by the Company without Cause, the vested portion of the Option shall remain exercisable until the earlier of (i) ninety (90) days from the date of such Termination, and (ii) the expiration of the stated term of the Option pursuant to Section 3(c) hereof.

(c) Voluntary Resignation. In the event of the Participant's voluntary Termination (other than a voluntary Termination described in Section 4(d) hereof), the vested portion of the Option shall remain exercisable until the earlier of (i) ninety (90) days from the date of such Termination, and (ii) the expiration of the stated term of the Option pursuant to Section 3(c) hereof.

(d) Termination for Cause. In the event of the Participant's Termination for Cause or in the event of the Participant's voluntary Termination (as provided in Section 4(c) hereof) after an event that would be grounds for a Termination for Cause, the Participant's entire Option (whether or not vested) shall terminate and expire upon such Termination.

(e) Treatment of Unvested Options upon Termination. Any portion of the Option that is not vested as of the date of the Participant's Termination for any reason shall terminate and expire as of the date of such Termination.

5. **Method of Exercise and Payment**. Subject to Section 8 hereof, to the extent that the Option has become vested and exercisable with respect to a number of shares of Common Stock as provided herein, the Option may thereafter be exercised by the Participant, in whole or in part, at any time or from time to time prior to the expiration of the Option as provided herein and in accordance with Sections 6.3(c) and 6.3(d) of the Plan, including, without limitation, by the filing of any written form of exercise notice as may be required by the Committee and payment in full of the Per Share Exercise Price specified above multiplied by the number of shares of Common Stock underlying the portion of the Option exercised.

6. **Non-Transferability**. The Option, and any rights and interests with respect thereto, issued under this Agreement and the Plan shall not be sold, exchanged, transferred, assigned or otherwise disposed of in any way by the Participant (or any beneficiary of the Participant), other than by testamentary disposition by the Participant or the laws of descent and distribution. Notwithstanding the foregoing, the Committee may, in its sole discretion, permit the Option to be Transferred to a Family Member for no value, provided that such Transfer shall only be valid upon execution of a written instrument in form and substance acceptable to the Committee in its sole discretion evidencing such Transfer and the transferee's acceptance thereof signed by the Participant and the transferee, and provided, further, that the Option may not be subsequently Transferred other than by will or by the laws of descent and distribution or to another Family Member (as permitted by the Committee in its sole discretion) in accordance with the terms of the Plan and this Agreement, and shall remain subject to the terms of the Plan and this Agreement. Any attempt to sell, exchange, transfer, assign, pledge, encumber or otherwise dispose of or hypothecate in any way the Option, or the levy of any execution, attachment or similar legal process upon the Option, contrary to the terms and provisions of this Agreement and/or the Plan shall be null and void and without legal force or effect.

7. **Governing Law**. All questions concerning the construction, validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof.

8. **Withholding of Tax**. The Company shall have the power and the right to deduct or withhold, or require the Participant to remit to the Company, an amount sufficient to satisfy any federal, state, local and foreign taxes of any kind (including, but not limited to, the Participant's FICA and SDI obligations) which the Company, in its sole discretion, deems necessary to be withheld or remitted to comply with the Code and/or any other applicable law, rule or regulation with respect to the Option and, if the Participant fails to do so, the Company may otherwise refuse to issue or transfer any shares of Common Stock otherwise required to be issued pursuant to this Agreement. Any minimum statutorily required withholding obligation with regard to the Participant may be satisfied by reducing the amount of cash or shares of Common Stock otherwise deliverable upon exercise of the Option.

9. **Entire Agreement; Amendment**. This Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. This Agreement may also be modified or amended by a writing signed by both the Company and the Participant. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

10. **Notices**. Any notice hereunder by the Participant shall be given to the Company in writing and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing and such notice shall be deemed duly given only upon receipt thereof at such address as the Participant may have on file with the Company.

11. **No Right to Employment**. Any questions as to whether and when there has been a Termination and the cause of such Termination shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or its Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause.

12. **Transfer of Personal Data**. The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the Option awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan). This authorization and consent is freely given by the Participant.

13. **Compliance with Laws**. The issuance of the Option (and the Option Shares upon exercise of the Option) pursuant to this Agreement shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act,

the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law or regulation applicable thereto. The Company shall not be obligated to issue the Option or any of the Option Shares pursuant to this Agreement if any such issuance would violate any such requirements.

14. **Section 409A**. Notwithstanding anything herein or in the Plan to the contrary, the Option is intended to be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent.

15. **Binding Agreement; Assignment**. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns. The Participant shall not assign (except in accordance with Section 6 hereof) any part of this Agreement without the prior express written consent of the Company.

16. **Headings**. The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

17. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

18. **Further Assurances**. Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

19. **Severability**. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

20. **Acquired Rights**. The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the award of the Option made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the Option awarded hereunder) give the Participant any right to any grants or awards in the future whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary salary, and shall not be considered as part of such salary in the event of severance, redundancy or resignation.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TORRID HOLDINGS INC.

By: _____

Name: _____

Title: _____

PARTICIPANT

_____

Name: _____

TORRID HOLDINGS INC.

2021 EMPLOYEE STOCK PURCHASE PLAN

ARTICLE I
PURPOSE

The Plan's purpose is to assist employees of the Company and its Designated Companies in acquiring a share ownership interest in the Company, and to help such employees provide for their future security and to encourage them to remain in the employment of the Company and its Subsidiaries and Affiliates.

The Plan consists of two components: the Section 423 Component and the Non-Section 423 Component. The Section 423 Component is intended to qualify as an "employee stock purchase plan" under Section 423 of the Code and shall be administered, interpreted and construed in a manner consistent with the requirements of Section 423 of the Code. In addition, the Plan authorizes the grant of Options under the Non-Section 423 Component, which need not qualify as Options granted pursuant to an "employee stock purchase plan" under Section 423 of the Code; such Options granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and the Designated Companies in locations outside of the United States. Except as otherwise provided herein or determined by the Administrator, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of the Plan, the Administrator may designate separate Offerings under the Plan, the terms of which need not be identical, in which Eligible Employees may participate, provided that the terms of participation are the same within each separate Offering under the Section 423 Component as determined under Section 423 of the Code. Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

ARTICLE II
DEFINITIONS

As used in the Plan, the following words and phrases have the meanings specified below, unless the context clearly indicates otherwise:

2.1 "**Administrator**" means the Committee, or such individuals to which authority to administer the Plan has been delegated under Section 7.1 hereof.

2.2 "**Affiliate**" means a corporation or other entity controlled by, controlling, or under control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2.3 "**Agent**" means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or an Employee with regard to the Plan.

2.4 "**Board**" means the Board of Directors of the Company.

2.5 "**Change in Control**" has the meaning set forth in the Company's 2021 Long-Term Incentive Plan.

2.6 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall also be a reference to any successor provision and any guidance and treasury regulation promulgated thereunder.

2.7 "**Committee**" means any committee of the Board duly authorized by the Board to administer the Plan.

2.8 "**Common Stock**" means the common stock, USD 0.001 par value per share, of the Company.

2.9 "**Company**" means Torrid Holdings Inc., a Delaware corporation, and its successors by operation of law.

2.10 "**Compensation**" of an Employee means the regular straight-time earnings or base salary, commissions and payments received for overtime and shift premiums received by such Employee as compensation for services to the Company or any Designated Company, determined before giving effect to any salary reduction agreement pursuant to (a) a qualified cash or deferred arrangement (within the meaning of Section 401(k) of the Code), or (b) a cafeteria plan (within the meaning of Section 125 of the Code). Compensation shall exclude any annual incentive compensation or other payments made under any bonus program, vacation pay, holiday pay, jury duty pay, funeral leave pay, military leave pay, education or tuition reimbursements, travel expenses, business and moving reimbursements, imputed income arising under any group insurance or benefit program, income received in connection with any share options, share appreciation rights, restricted shares, restricted share units or other compensatory equity awards, fringe benefits, other special or one-time payments (e.g., retention or sign-on bonuses) and all contributions made by the Company or any Designated Subsidiary for the Employee's benefit under any employee benefit plan now or hereafter established. The Administrator, in its discretion, may establish a different definition of Compensation for an Offering, which for the Section 423 Component shall apply on a uniform and nondiscriminatory basis. Further, the Administrator will have discretion to determine the application of this definition to Eligible Employees outside the United States.

2.11 "**Designated Company**" means each Affiliate and Subsidiary, including any Affiliate and Subsidiary in existence on the Effective Date and any Affiliate and Subsidiary formed or acquired following the Effective Date, that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan, in accordance with Section 7.2 hereof, such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component. A Designated Company may participate in either the Section 423 Component or Non-Section 423 Component, but not both. Notwithstanding the foregoing, if any Affiliate or Subsidiary is disregarded for U.S. federal income tax purposes in respect of the Company or any Designated Company participating in the Section 423 Component, then such disregarded Affiliate or Subsidiary shall automatically be a Designated Company participating in the Section 423 Component. If any Affiliate or Subsidiary is disregarded for U.S. federal income tax purposes in respect of any Designated Company participating in the Non-Section 423 Component, the Administrator may exclude such Affiliate or Subsidiary from participating in the Plan, notwithstanding that the Designated Company in respect of which such Affiliate or Subsidiary is disregarded may participate in the Plan.

2.12 "**Effective Date**" means the date the Plan is adopted by the Board, subject to approval of the Company's shareholders.

2.13 "**Eligible Employee**" means any Employee of the Company or a Designated Company who has completed at least six (6) months of continuous service with the Company. The Administrator, in its discretion, may also exclude any or all of the following unless prohibited by applicable law, Employees:

(a) who are customarily scheduled to work 20 hours or less per week;

(b) whose customary employment is not more than five months in a calendar year;

(c) who are not employed by the Company or a Designated Company prior to the applicable Enrollment Date occurs; and

(d) any Employee who is a "highly compensated employee" of the Company or any Designated Company (within the meaning of Section 414(q) of the Code), or that is such a "highly compensated employee" (A) with compensation above a specified level, (B) who is an officer or (C) who is subject to the disclosure requirements of Section 16(a) of the Exchange Act; or

(e) any Employee who is a citizen or resident of a jurisdiction outside the United States (without regard to whether they are also a citizen of the United States or a resident alien (within the meaning of Section 7701(b)(1)(A) of the Code)) if either (A) the grant of the Option is prohibited under the laws of the jurisdiction governing such Employee, or (B) compliance with the laws of the jurisdiction would cause the Section 423 Component, any Offering thereunder or an Option granted thereunder to violate the requirements of Section 423 of the Code; *provided* that any exclusion shall be applied in an identical manner under each Offering to all Employees in accordance with Treas. Reg. § 1.423-2(e).

Notwithstanding the foregoing, any Employee who, after the granting of the Option, would be deemed for purposes of Section 423(b)(3) of the Code to possess 5% or more of the total combined voting power or value of all classes of shares of the Company or any Subsidiary shall not be an Eligible Employee. For purposes of the preceding sentence, the rules of Section 424(d) of the Code with regard to the attribution of share ownership shall apply in determining the share ownership of an individual, and shares which an Employee may purchase under outstanding options under the Plan shall be treated as shares owned by the Employee.

Further, with respect to the Non-Section 423 Component, (a) the Administrator may limit eligibility further within a Designated Company so as to only designate some Employees of a Designated Company as Eligible Employees, and (b) to the extent any restrictions in this definition are not consistent with applicable local laws, the applicable local laws shall control.

2.14 "**Employee**" means any person who renders services to the Company or a Designated Company in the status of an employee within the meaning of Section 3401(c) of the Code. "Employee" shall not include any director of the Company or a Designated Company who does not render services to the Company or a Designated Company in the status of an employee within the meaning of Section 3401(c) of the Code. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on military leave, sick leave or other leave of absence approved by the Company or a Designated Company and meeting the requirements of Treas. Reg. § 1.421-1(h)(2). Where the period of leave exceeds three months, or such other period specified in Treas. Reg. § 1.421-1(h)(2), and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three (3)-month period, or such other period specified in Treas. Reg. § 1.421-1(h)(2).

2.15 "**Enrollment Date**" means the first date of each Offering Period.

2.16 "**Exercise Date**" means the last day of each Purchase Period, except as provided in Section 5.2 hereof.

2.17 "**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.18 "**Fair Market Value**" means, as of any date, the value of the Common Stock determined as follows:

(a) If the Common Stock is (i) listed on any established securities exchange (such as the New York Stock Exchange or Nasdaq Stock Market), (ii) listed on any national market system or (iii) listed, quoted or traded on any automated quotation system, the Fair Market Value of a Share shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, the Fair Market Value of a Share shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, the Fair Market Value of a Share shall be established by the Administrator in good faith.

2.19 "**Grant Date**" means the first day of an Offering Period.

2.20 "**New Exercise Date**" has the meaning set forth in Section 5.2(b) hereof.

2.21 "**Non-Section 423 Component**" means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of the Plan, in each case, pursuant to which Options may be granted to Eligible Employees that need not satisfy the requirements for Options granted pursuant to an "employee stock purchase plan" that are set forth under Section 423 of the Code.

2.22 "**Offering**" means an offer under the Plan of an Option that may be exercised during an Offering Period as further described in Article 4 hereof. Unless otherwise specified by the Administrator, each Offering to Eligible Employees shall be deemed a separate Offering, even if the dates and other terms of the applicable Purchase Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treas. Reg. § 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering thereunder together satisfy Treas. Reg. § 1.423-2(a)(2) and (a)(3).

2.23 "**Offering Period**" means the periods of approximately six (6) months during which Options shall be granted to Participants, commencing on such Trading Day as designated by the Administrator and terminating on a Trading Day approximately six (6) months later, each as determined by the Administrator in its sole discretion. The duration and timing of Offering Periods may be established or changed by the Administrator at any time, in its sole discretion and may consist of one or more Purchase Periods. Notwithstanding the foregoing, in no event may an Offering Period exceed 27 months.

2.24 "**Option**" means the right to purchase Shares pursuant to the Plan during each Offering Period.

2.25 "**Option Price**" means the purchase price of a Share hereunder as provided in Section 4.2 hereof.

2.26 "**Parent**" means any entity that is a parent corporation of the Company within the meaning of Section 424 of the Code.

2.27 "**Participant**" means any Eligible Employee who elects to participate in the Plan.

2.28 "**Payday**" means the regular and recurring established day for payment of Compensation to an Employee.

2.29 "**Plan**" means this Employee Stock Purchase Plan, including both the Section 423 Component and Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.30 "**Plan Account**" means a bookkeeping account established and maintained by the Company in the name of each Participant.

2.31 "**Purchase Period**" means the period commencing on the first Trading Day of each Offering Period and terminating on the last Trading Day of each Offering Period, as determined by the Administrator in its sole discretion. The duration and timing of Purchase Periods may be established or changed by the Administrator at any time, in its sole discretion. Notwithstanding the foregoing, in no event may a Purchase Period exceed the duration of the Offering Period under which it is established.

2.32 "**Section 409A**" means the nonqualified deferred compensation rules under Section 409A of the Code and any applicable treasury regulations and other official guidance thereunder.

2.33 "**Section 423 Component**" means those Offerings under the Plan that are intended to meet the requirements under Section 423(b) of the Code.

2.34 "**Shares**" means shares of Common Stock.

2.35 "**Subsidiary**" means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.36 "**Tax-Related Items**" means any U.S. and non-U.S. federal, provincial, state and/or local taxes (including, without limitation, income tax, social insurance contributions, fringe benefit tax, employment tax, stamp tax and any employer tax liability which has been transferred to a Participant) for which a Participant is liable in connection with his or her participation in the Plan.

2.37 "**Treas. Reg.**" means U.S. Department of the Treasury regulations.

2.38 "**Withdrawal Election**" has the meaning set forth in Section 6.1(a) hereof.

ARTICLE III
PARTICIPATION

3.1 Eligibility.

(a) Any Eligible Employee who is employed by the Company or a Designated Company on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of Articles 4 and 5 hereof, and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

(b) No Eligible Employee shall be granted an Option under the Section 423 Component which permits the Participant to purchase Shares under the Plan, and to purchase shares under all other employee stock purchase plans of the Company, any Parent or any Subsidiary subject to Section 423 of the Code, at a rate which exceeds USD 25,000 of fair market value of such shares (determined at the time such Option is granted) for each calendar year in which such Option is outstanding at any time. The limitation under this Section 3.1(b) shall be applied in accordance with Section 423(b)(8) of the Code.

3.2 Election to Participate; Payroll Deductions.

(a) Each individual who is an Eligible Employee as of an Offering Period's Enrollment Date may elect to participate in such Offering Period and the Plan by delivering to the Company or an Agent designated by the Company an enrollment form including a payroll deduction authorization (which may be in an electronic format or such other method as determined by the Company in accordance with the Company's practices) (a "**Participation Election**") no later than the period of time prior to the applicable Enrollment Date determined by the Administrator, in its sole discretion. Except as provided in Section 3.2(e) hereof, an Eligible Employee may participate in the Plan only by means of payroll deduction.

(b) Subject to Section 3.1(b) hereof and except as may otherwise be determined by the Administrator, payroll deductions (i) shall equal at least 1% of the Participant's Compensation as of each Payday of the Offering Period following the Enrollment Date, but not more than 15% of the Participant's Compensation as of each Payday of the Offering Period following the Enrollment Date; and (ii) shall be expressed as a whole number percentage. Subject to Section 3.2(e) hereof, amounts deducted from a Participant's Compensation with respect to an Offering Period pursuant to this Section 3.2 shall be deducted each Payday through payroll deduction and credited to the Participant's Plan Account.

(c) Unless otherwise determined by the Administrator, following at least one payroll deduction, a Participant may increase or decrease the percentage of Compensation or the fixed dollar amount designated in his or her enrollment form, subject to the limits of this Section 3.2, or may suspend his or her payroll deductions, at any time during an Offering Period; *provided*, *however*, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections during each Offering Period in the applicable Offering (and in the absence of any specific designation by the Administrator, a Participant shall only be allowed to decrease his or her payroll deduction election one time during each Offering Period and shall not be permitted to increase his or her payroll deduction at any time during an Offering Period). Any such change or suspension of payroll deductions shall be effective with the first full payroll period following ten business days after the Company's receipt of the new enrollment form (or such shorter or longer period as may be specified by the Administrator in the applicable Offering). In the event a Participant suspends his or her payroll deductions, such Participant's cumulative payroll deductions prior to the suspension shall remain in his or her account and shall be applied to the purchase of Shares on the next occurring Exercise Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Section 6.1.

(d) Upon the completion of an Offering Period, each Participant in such Offering Period shall automatically participate in the immediately following Offering Period at the same payroll deduction percentage as in effect at the termination of such Offering Period, unless such Participant delivers to the Company or an Agent designated by the Company a different Participation Election with respect to the successive Offering Period in accordance with Section 3.2(a) hereof, or unless such Participant becomes ineligible for participation in the Plan.

(e) Notwithstanding any other provisions of the Plan to the contrary, in non-U.S. jurisdictions where participation in the Plan through payroll deductions is prohibited or otherwise problematic under applicable local laws (as determined by the Administrator in its sole discretion), the Administrator may provide that an Eligible Employee may elect to participate through contributions to the Participant's Plan Account in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; provided, however, that, for any Offering under the Section 423 Component, the Administrator must determine that any alternative method of contribution is applied on an equal and uniform basis to all Eligible Employees in the Offering. Any reference to "payroll deductions" in this Section 3.2 (or in any other section of the Plan) will similarly cover contributions by other means made pursuant to this Section 3.2(e).

ARTICLE IV
PURCHASE OF SHARES

4.1 Grant of Option. The Company may make one or more Offerings under the Plan, which may be successive or overlapping with one another, until the earlier of: (i) the date on which all Shares available under the Plan have been purchased or (ii) the date on which the Plan is suspended or terminates. No Offering shall commence prior to the date on which the Company's registration statement on Form S-8 is filed with the U.S. Securities and Exchange Commission in respect of the Plan. The Administrator shall designate the terms and conditions of each Offering in writing, including without limitation, the Offering Period and the Purchase Periods. Each Participant shall be granted an Option with respect to an Offering Period on the applicable Grant Date. Subject to the limitations of Section 3.1(b) hereof, the number of Shares subject to a Participant's Option shall be determined by dividing (a) such Participant's payroll deductions accumulated prior to an Exercise Date and retained in the Participant's Plan Account on such Exercise Date by (b) the applicable Option Price; *provided* that in no event shall a Participant be permitted to purchase during each Offering Period more than 1,000 shares of Common Stock (subject to any adjustment pursuant to Section 5.2 hereof). The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of Shares that a Participant may purchase during any Purchase Periods under such future Offering Periods. Each Option shall expire on the last Exercise Date for the applicable Offering Period immediately after the automatic exercise of the Option in accordance with Section 4.3 hereof, unless such Option terminates earlier in accordance with Article 6 hereof.

4.2 Option Price. The Option Price shall equal 85% of the lesser of the Fair Market Value of a Share on (a) the applicable Grant Date and (b) the applicable Exercise Date, or such other price designated by the Administrator.

4.3 Purchase of Shares.

(a) On each Exercise Date for an Offering Period, each Participant shall automatically and without any action on such Participant's part be deemed to have exercised the Participant's Option to purchase at the applicable Option Price the largest number of whole Shares which can be purchased with the amount in the Participant's Plan Account, subject to the limitations set forth in the Plan. Unless otherwise determined by the Administrator in advance of an Offering or in accordance with applicable law, any balance that is remaining in the Participant's Plan Account (after exercise of such Participant's Option) as of the Exercise Date shall be carried forward into the next Offering Period, unless the Participant has properly elected to withdraw from the Plan, has ceased to be an Eligible Employee or with respect to the maximum limitations set forth in Section 3.1(b) and Section 4.1. Any balance not carried forward to the next Offering Period in accordance with the prior sentence shall promptly be refunded as soon as administratively practicable to the applicable Participant.

(b) As soon as practicable following each Exercise Date, the number of Shares purchased by such Participant pursuant to Section 4.3(a) hereof shall be delivered (either in share certificate or book entry form), in the Company's sole discretion, to either (i) the Participant or (ii) an account established in the Participant's name at a stock brokerage or other financial services firm designated by the Company. The Company may require that shares be retained with such brokerage or firm for a designated period of time and/or may establish procedures to permit tracking of disqualifying dispositions of such shares.

4.4 Transferability of Rights. An Option granted under the Plan shall not be transferable, other than by will or the applicable laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. No option or interest or right to the Option shall be available to pay off any debts, contracts or engagements of the Participant or the Participant's successors in interest or shall be subject to disposition by pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempt at disposition of the Option shall have no effect.

ARTICLE V
PROVISIONS RELATING TO COMMON STOCK

5.1 Shares Reserved. Subject to adjustment as provided in Section 5.2 hereof, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be 3,650,000 Shares. Shares made available for sale under the Plan may be authorized but unissued shares or treasury Shares. If any right granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such right shall again become available for issuance under the Plan.

5.2 Adjustments Upon Changes in Capitalization, Dissolution, Liquidation, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares which have been authorized for issuance under the Plan but not yet placed under Option, as well as the price per share and the number of Shares covered by each Option under the Plan which has not yet been exercised shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a share split, reverse share split, share dividend, combination, amalgamation, consolidation, reorganization, arrangement or reclassification of the Shares, or any other increase or decrease in the number Shares effected without receipt of consideration by the Company; *provided*, *however*, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of any class, or securities convertible into shares of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Periods then in progress shall be shortened by setting a new Exercise Date (the "**New Exercise Date**"), and shall terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date shall be before the date of the Company's proposed dissolution or liquidation. The Administrator shall notify each Participant in writing, at least ten business days prior to the New Exercise Date, that the Exercise Date for the Participant's Option has been changed to the New Exercise Date and that the Participant's Option shall be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 6.1 hereof or the Participant has ceased to be an Eligible Employee as provided in Section 6.2 hereof.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each outstanding Option shall be assumed or an equivalent Option substituted by the successor corporation or a parent or subsidiary of the successor corporation. If the successor corporation refuses to assume or substitute for the Option, any Offering Periods then in progress shall be shortened by setting a New Exercise Date and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall be before the date of the Company's proposed sale or merger. The Administrator shall notify each Participant in writing, at least ten business days prior to the New Exercise Date, that the Exercise Date for the Participant's Option has been changed to the New Exercise Date and that the Participant's Option shall be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 6.1 hereof or the Participant has ceased to be an Eligible Employee as provided in Section 6.2 hereof.

5.3 Insufficient Shares. If the Administrator determines that, on a given Exercise Date, the number of Shares with respect to which Options are to be exercised may exceed the number of Shares remaining available for sale under the Plan on such Exercise Date, the Administrator shall make a pro rata allocation of the Shares available for issuance on such Exercise Date in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants exercising Options to purchase Shares on such Exercise Date, and unless

additional shares are authorized for issuance under the Plan, no further Offering Periods shall take place and the Plan shall terminate pursuant to Section 7.5 hereof. If an Offering Period is so terminated, then the balance of the amount credited to the Participant's Plan Account which has not been applied to the purchase of Shares shall be paid to such Participant in one lump sum in cash within 30 days after such Exercise Date, without any interest thereon (except as may be required by applicable local laws).

5.4 Rights as Shareholders. With respect to Shares subject to an Option, a Participant shall not be deemed to be a shareholder of the Company and shall not have any of the rights or privileges of a shareholder. A Participant shall have the rights and privileges of a shareholder of the Company when, but not until, the Shares have been deposited in the designated brokerage account following exercise of the Participant's Option.

ARTICLE VI
TERMINATION OF PARTICIPATION

6.1 Cessation of Contributions; Voluntary Withdrawal.

(a) A Participant may cease payroll deductions during an Offering Period and elect to withdraw from the Plan by delivering written notice of such election to the Company or an Agent designated by the Company in such form and at such time prior to the Exercise Date for such Offering Period as may be established by the Administrator (a "**Withdrawal Election**"). In the event a Participant elects to withdraw from the Plan, amounts then credited to such Participant's Plan Account shall be returned to the Participant in one lump-sum payment in cash within 30 days after such election is received by the Company, without any interest thereon (except as may be required by applicable local laws), and the Participant shall cease to participate in the Plan and the Participant's Option for such Offering Period shall terminate upon receipt of the Withdrawal Election.

(b) A Participant's withdrawal from the Plan shall not have any effect upon the Participant's eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the termination of the Offering Period from which the Participant withdraws.

(c) A Participant who ceases contributions to the Plan during any Offering Period shall not be permitted to resume contributions to the Plan during that Offering Period.

6.2 Termination of Eligibility. Upon a Participant's ceasing to be an Eligible Employee, for any reason, such Participant's Option for the applicable Offering Period shall automatically terminate, the Participant shall be deemed to have elected to withdraw from the Plan, and any balance on such Participant's Plan Account shall be paid to such Participant or, in the case of the Participant's death, to the person or persons entitled thereto pursuant to applicable law, within 30 days after such cessation of being an Eligible Employee, without any interest thereon (except as may be required by applicable local laws). If a Participant transfers employment from the Company or any Designated Company participating in the Section 423 Component to any Designated Company participating in the Non-Section 423 Component, such transfer shall not be treated as a termination of employment, but the Participant shall immediately cease to participate

in the Section 423 Component; however, any contributions made for the Offering Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for the Participant's participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from any Designated Company participating in the Non-Section 423 Component to the Company or any Designated Company participating in the Section 423 Component shall not be treated as terminating the Participant's employment and shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component, or (ii) the Enrollment Date of the first Offering Period in which the Participant is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between companies participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code.

ARTICLE VII
GENERAL PROVISIONS

7.1 Administration.

(a) The Plan shall be administered by the Committee, which shall be composed of members of the Board. The Committee may delegate administrative tasks under the Plan to the services of an Agent or Employees to assist in the administration of the Plan, including without limitation, determining the Designated Companies participating in the Plan, establishing and maintaining an individual securities account under the Plan for each Participant, determining enrollment and withdrawal deadlines and determining exchange rates. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Administrator under the Plan.

(b) It shall be the duty of the Administrator to conduct the general administration of the Plan in accordance with the provisions of the Plan. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To establish and terminate Offerings;

(ii) To determine when and how Options shall be granted and the provisions and terms of each Offering (which need not be identical);

(iii) To select Designated Companies in accordance with Section 7.2 hereof; and

(iv) To construe and interpret the Plan, the terms of any Offering and the terms of the Options and to adopt such rules for the administration, interpretation, and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, any Offering or any Option, in a manner and to the extent it shall deem necessary or expedient to administer the Plan, subject to Section 423 of the Code for the Section 423 Component.

(c) The Administrator may adopt rules or procedures relating to the operation and administration of the Plan to accommodate the specific requirements of local laws and procedures, *provided* that the adoption and implementation of any such rules and/or procedures would not cause the Section 423 Component to be in noncompliance with Section 423 of the Code. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding handling of participation elections, payroll deductions, payment of interest, conversion of local currency, payroll tax, withholding procedures and handling of share certificates which vary with local requirements.

(d) The Administrator may adopt sub-plans applicable to particular Designated Companies or locations, which sub-plans may be designed to be outside the scope of Section 423 of the Code. The rules of such sub-plans may take precedence over other provisions of the Plan, with the exception of Section 5.1 hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of the Plan shall govern the operation of such sub-plan.

(e) All expenses and liabilities incurred by the Administrator in connection with the administration of the Plan shall be borne by the Company. The Administrator may employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Administrator, the Company and its officers and directors shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Administrator in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No member of the Board or Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Options, and all members of the Board or Administrator shall be fully protected by the Company in respect to any such action, determination, or interpretation. Any and all risks resulting from any market fluctuations or conditions of any nature and affecting the price of Shares are assumed by the Participant.

7.2 Designation of Affiliates and Subsidiaries. The Administrator shall designate from time to time the Affiliates and Subsidiaries that shall constitute Designated Companies, and determine whether such Designated Companies shall participate in the Section 423 Component or Non-Section 423 Component; *provided, however*, that an Affiliate that does not also qualify as a Subsidiary may be designated only as participating in the Non-Section 423 Component. The Administrator may designate an Affiliate or Subsidiary, or terminate the designation of an Affiliate or Subsidiary, without the approval of the shareholders of the Company.

7.3 Reports. Individual accounts shall be maintained for each Participant in the Plan. Statements of Plan Accounts shall be given to Participants at least annually, which statements shall set forth the amounts of payroll deductions, the Option Price, the number of shares purchased and the remaining cash balance, if any.

7.4 No Right to Employment. Nothing in the Plan shall be construed to give any person (including any Participant) the right to remain in the employ of the Company, a Parent, a Subsidiary or an Affiliate or to affect the right of the Company, any Parent, any Subsidiary or any Affiliate to terminate the employment of any person (including any Participant) at any time, with or without cause, which right is expressly reserved.

7.5 Amendment and Termination of the Plan.

(a) The Board may, in its sole discretion, amend, suspend or terminate the Plan at any time and from time to time. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision), with respect to the Section 423 Component, or any other applicable law, regulation or stock exchange rule, the Company shall obtain shareholder approval of any such amendment to the Plan in such a manner and to such a degree as required by Section 423 of the Code or such other law, regulation or rule.

(b) If the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may in its discretion modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) altering the Option Price for any Offering Period including an Offering Period underway at the time of the change in Option Price;

(ii) shortening any Offering Period so that the Offering Period ends on a new Exercise Date, including an Offering Period underway at the time of the Administrator action; and

(iii) allocating Shares.

Such modifications or amendments shall not require shareholder approval or the consent of any Participant.

(c) Notwithstanding any other provision in the Plan to the contrary, the Plan shall be automatically terminated following a Change in Control.

(d) Upon termination of the Plan, the balance in each Participant's Plan Account shall be refunded as soon as practicable after such termination, without any interest thereon (except as may be required by applicable local laws).

7.6 Use of Funds; No Interest Paid. All funds received by the Company by reason of purchase of shares of Shares under the Plan shall be included in the general funds of the Company free of any trust or other restriction and may be used for any corporate purpose (except as may be required by applicable local laws). No interest shall be paid to any Participant or credited under the Plan (except as may be required by applicable local laws).

7.7 Term; Approval by Shareholders. No Option may be granted during any period of suspension of the Plan or after termination of the Plan. The Plan shall be submitted for the approval of the Company's shareholders within 12 months after the date of the Board's initial adoption of the Plan. Options may be granted prior to such shareholder approval; *provided*, *however*, that such Options shall not be exercisable prior to the time when the Plan is approved by the shareholders; *provided*, *further* that if such approval has not been obtained by the end of the 12-month period, all Options previously granted under the Plan shall thereupon terminate and be canceled and become null and void without being exercised.

7.8 Effect Upon Other Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company, any Parent, any Subsidiary or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company, any Parent, any Subsidiary or any Affiliate (a) to establish any other forms of incentives or compensation for employees of the Company or any Parent, any Subsidiary or any Affiliate, or (b) to grant or assume Options other than under the Plan in connection with any proper corporate purpose, including, but not by way of limitation, the grant or assumption of options in connection with the acquisition, by purchase, lease, merger, amalgamation, combination, arrangement, consolidation or otherwise, of the business, shares or assets of any corporation, firm or association.

7.9 Conformity to Securities Laws. Notwithstanding any other provision of the Plan, the Plan and the participation in the Plan by any individual who is then subject to Section 16 of the Exchange Act shall be subject to any additional limitations set forth in any applicable exemption rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

7.10 Notice of Disposition of Shares. Each Participant shall give the Company prompt notice of any disposition or other transfer of any Shares, acquired pursuant to the exercise of an Option granted under the Section 423 Component, if such disposition or transfer is made (a) within two years after the applicable Grant Date or (b) within one year after the transfer of such Shares to such Participant upon exercise of such Option. The Company may direct that any certificates evidencing shares acquired pursuant to the Plan refer to such requirement.

7.11 Tax Withholding. At the time of any taxable event that creates a withholding obligation for the Company or any Parent, Affiliate or Subsidiary, the Participant will make adequate provision for any Tax-Related Items. In their sole discretion, and except as otherwise determined by the Administrator, the Company or the Designated Company that employs or employed the Participant may satisfy their obligations to withhold Tax-Related Items by (a) withholding from the Participant's wages or other compensation, (b) withholding a sufficient whole number of Shares otherwise issuable following exercise of the Option having an aggregate value sufficient to pay the Tax-Related Items required to be withheld with respect to the Option and/or shares, or (c) withholding from proceeds from the sale of Shares issued upon exercise of the Option, either through a voluntary sale or a mandatory sale arranged by the Company, or (d) any other method determined by the Administrator to be in compliance with applicable laws.

7.12 Governing Law. The Plan and all rights, agreements and obligations hereunder shall be administered, interpreted and enforced under the laws of the State of Delaware, without regard to the conflict of law rules thereof or of any other jurisdiction.

7.13 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

7.14 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of an Option by a Participant, unless and until the Administrator has determined, with advice of counsel, that the issuance of such Shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any securities exchange or automated quotation system on which the Shares are listed or traded, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Administrator may require that a Participant make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

(b) All certificates for Shares delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with U.S. and non-U.S. federal, provincial, state or local securities or other laws, rules and regulations and the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Administrator may place legends on any certificate or book entry evidencing Shares to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Option, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by any applicable law, rule or regulation, the Company may, in lieu of delivering to any Participant certificates evidencing Shares issued in connection with any Option, record the issuance of Shares in the books of the Company (or, as applicable, its transfer agent or share plan administrator).

If, pursuant to this Section 7.14, the Administrator determines that Shares will not be issued to any Participant, the Company is relieved from liability to any Participant except to refund to the Participant such Participant's Plan Account balance, without interest thereon (except as may be required by applicable local laws).

7.15 Equal Rights and Privileges. All Eligible Employees granted Options pursuant to an Offering under the Section 423 Component shall have equal rights and privileges under the Plan to the extent required under Section 423 of the Code so that the Section 423 Component qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Any provision of the Section 423 Component that is inconsistent with Section 423 of the Code shall, without further act or amendment by the Company or the Board, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Eligible Employees participating in the Non-Section 423 Component need not have the same rights and privileges as each other, or as Eligible Employees participating in the Section 423 Component.

7.16 Rules Particular to Specific Countries. Notwithstanding anything herein to the contrary, the terms and conditions of the Plan with respect to Participants who are tax residents of a particular non-U.S. country or who are non-U.S. nationals or employed in non-U.S. jurisdictions may be subject to an addendum to the Plan in the form of an appendix or sub-plan (which appendix or sub-plan may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator). To the extent that the terms and conditions set forth in an appendix or sub-plan conflict with any provisions of the Plan, the provisions of the appendix or sub-plan shall govern. The adoption of any such appendix or sub-plan shall be pursuant to Section 7.1 above. Without limiting the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are non-U.S. nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Affiliates or Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions, *provided* that the adoption and implementation of any such rules and/or procedures would not cause the Section 423 Component to be in noncompliance with Section 423 of the Code.

7.17 Section 409A. The Section 423 Component of the Plan and the Options granted pursuant to Offerings thereunder are intended to be exempt from the application of Section 409A. Neither the Non-Section 423 Component nor any Option granted pursuant to an Offering thereunder is intended to constitute or provide for "nonqualified deferred compensation" within the meaning of Section 409A. Notwithstanding any provision of the Plan to the contrary, if the Administrator determines that any Option granted under the Plan may be or become subject to Section 409A or that any provision of the Plan may cause an Option granted under the Plan to be or become subject to Section 409A, the Administrator may adopt such amendments to the Plan and/or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions as the Administrator determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, either through compliance with the requirements of Section 409A or through an available exemption therefrom.

* * * * *

Exhibit 10.22

DIRECTOR AND OFFICER INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is made as of [●], 2021 by and between Torrid Holdings, Inc., a Delaware corporation (the "Corporation"), in its own name and on behalf of its direct and indirect subsidiaries, and [●], an individual ("Indemnitee").

RECITALS:

WHEREAS, directors, officers and employees ("Representatives") in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as Representatives unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation or business enterprise;

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined that the increased difficulty in attracting and retaining highly competent persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of protection against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the Corporation;

WHEREAS, (a) the Amended and Restated Bylaws of the Corporation (as amended, restated or otherwise modified, the "Bylaws") require indemnification of the officers and directors of the Corporation, (b) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL") and (c) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and its Representatives with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (a) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (b) Indemnitee may not be willing to serve or continue to serve as a Representative without adequate protection, (c) the Corporation desires Indemnitee to serve in such capacity and (d) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that [he/she] be so indemnified.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions.

(a) As used in this Agreement:

"Agreement" shall have the meaning ascribed to such term in the Preamble hereto.

"Board" shall have the meaning ascribed to such term in the Recitals hereto.

"Bylaws" shall have the meaning ascribed to such term in the Recitals hereto.

"Certificate of Incorporation" shall mean the Amended and Restated Certificate of Incorporation of the Corporation, as amended, restated or otherwise modified from time to time.

"Change in Control" has the meaning ascribed to such term in Section 1(b) hereof.

"Corporate Status" describes the status of an individual who is or was a Representative of an Enterprise.

"Corporation" shall have the meaning ascribed to such term in the Preamble hereto.

"DGCL" shall have the meaning ascribed to such term in the Recitals hereto.

"Enterprise" shall mean the Corporation and any other Person, employee benefit plan, joint venture or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a Representative.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Expenses" shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, in respect of or relating to, any Proceeding, including, without limitation, the

premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement (on a grossed up basis) and (iv) any interest, assessments or other charges in respect of the foregoing.

"Indemnitee" shall have the meaning ascribed to such term in the Preamble hereto.

"Indemnity Obligations" shall mean all obligations of the Corporation to Indemnitee under this Agreement, including, without limitation, the Corporation's obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

"Independent Counsel" shall mean a law firm, or a member of a law firm, or an attorney (following a Change of Control, selected in accordance with the provisions of Section 20 hereof), that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Proceeding giving rise to a claim for indemnification; provided, however, that the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, in respect of or relating to or occurring as a direct or indirect consequence of any Proceeding, including, without limitation, amounts paid in whole or partial settlement of any Proceeding, all Expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding, and any consequential damages resulting from any Proceeding or the settlement, judgment, or result thereof.

"Person" shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

"Proceeding" shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, administrative hearing or any other actual,

threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be, or is threatened to be, involved as a party or witness or otherwise involved, affected or injured (i) by reason of the fact that Indemnitee is or was a Representative of the Corporation, (ii) by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee's part while acting as Representative of the Corporation or (iii) by reason of the fact that Indemnitee is or was serving at the request of the Corporation as a Representative of another Person, whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement.

"Representative" shall have the meaning ascribed to such term in the Recitals hereto.

"SOX Act" means the Sarbanes-Oxley Act of 2002.

"Sponsor Entities" shall mean funds affiliated with Sycamore Partners Management, L.P., Sycamore Partners Torrid, L.L.C. and any of their respective Affiliates who beneficially own shares of common stock, par value $0.01 per share, of the Corporation, and any securities into which such shares of common stock shall have been changed or any securities resulting from any reclassification or recapitalization of such shares of common stock from time to time; provided, however, that neither the Corporation nor any of its subsidiaries shall be considered Sponsor Entities hereunder.

"Submission Date" shall have the meaning ascribed to such term in Section 10(b).

(b) A "Change in Control" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than the Sponsor Entities and other than a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or a Person owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of shares of the Corporation, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Corporation representing 50% or more of the total voting power represented by the Corporation's then outstanding voting securities; (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Corporation's stockholders was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or (iii) the stockholders of the Corporation approve a merger or consolidation of the Corporation with any other Person other than a

merger or consolidation which would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving Person) more than 50% of the total voting power represented by the voting securities of the Corporation or such surviving Person outstanding immediately after such merger or consolidation, or the stockholders of the Corporation approve a plan of complete liquidation of the Corporation or an agreement for the sale or disposition by the Corporation of (in one transaction or a series of transactions) all or substantially all of the Corporation's assets, other than to any Sponsor Entity. Notwithstanding the foregoing, a "Change in Control" shall be deemed not to have occurred as a result of any transaction or series of transactions following which the Sponsor Entities possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the Company)or any successor thereto), whether through the ownership of voting securities, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the Board or the board of directors or similar body governing the affairs of any successor to the Company.

(c) For the purpose hereof, references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Corporation" shall include, without limitation, any service as a Representative of the Corporation which imposes duties on, or involves services by, such Representative with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in manner "not opposed to the best interests of the Corporation" as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee's behalf in connection with or as a consequence of any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor which shall be governed by the provisions set forth in Section 3 hereof) or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. For the avoidance of doubt, a finding, admission or stipulation that an Indemnitee has acted with gross negligence or recklessness shall not, of itself, create a presumption that such Indemnitee has failed to meet the standard or conduct required for indemnification in this Section 2.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee's behalf in connection with or as a consequence of any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in, or not opposed, to the best interests of the Corporation. No indemnification for Liabilities and Expenses

shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification. For the avoidance of doubt, a finding, admission or stipulation that an Indemnitee has acted with gross negligence or recklessness shall not, of itself, create a presumption that such Indemnitee has failed to meet the standard or conduct required for indemnification in this Section 3.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, to the extent that (a) Indemnitee is a party to (or a participant in) any Proceeding, (b) the Corporation is not permitted by applicable law to indemnify Indemnitee with respect to any claim brought in such Proceeding if such claim is asserted successfully against Indemnitee and (c) Indemnitee is not wholly successful in such Proceeding, but is successful, on the merits or otherwise (including, without limitation, settlement thereof), as to one or more but less than all claims, issues or matters in such Proceeding, then the Corporation shall indemnify Indemnitee, to the fullest extent permitted by applicable law, against all Liabilities and Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf, in connection with or as a consequence of each successfully resolved claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any claim, issue or matter in such a Proceeding by settlement, entry of a plea of *nolo contendere* or by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Liabilities and Expenses suffered or incurred by him or on his behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to, or threatened to be made a party to, any Proceeding (including, without limitation, a Proceeding by or in the right of the Corporation to procure a judgment in its favor), against all Liabilities and Expenses suffered or incurred by Indemnitee in connection with such Proceeding:

(a) to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to, or replacement of, the DGCL, and

(b) to the fullest extent authorized or permitted by any amendments to, or replacements of, the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy procured by the Corporation, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid, subject to any subrogation rights set forth in Section 13 hereof;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements to which the Indemnitee has consented);

(c) for any reimbursement of the Corporation by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the SOX Act or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the payment to the Corporation of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the SOX Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements to which the Indemnitee has consented);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees, agents or other indemnitees (not by way of defense), unless (i) the Board authorized the Proceeding (or the relevant part of the Proceeding), (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) with respect to proceedings brought to establish or enforce a right to indemnification or advancement under this Agreement or under any other agreement, provision in the Bylaws or Certificate of Incorporation or applicable law, or (v) otherwise required by applicable law; or

(e) if a court of competent jurisdiction determines that such indemnification is prohibited by applicable law in a final judgment from which there is no further right of appeal.

Section 8. Advances of Expenses. In furtherance of the relevant requirements of the Bylaws and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the fullest extent permitted by law, Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within ten (10) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded

by applicable law shall not be included with the invoice), whether prior to, or after, final disposition of any Proceeding, including any appeal. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses incurred pursuing an action to enforce this right of advancement, including, without limitation, Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking, providing that Indemnitee undertakes to repay the advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation.

To obtain indemnification, Indemnitee shall submit to the Corporation a written request, including therein documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification, and shall request payment thereof. The Corporation shall (a) pay Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expense, or (c) reimburse Indemnity for such Expenses.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement.

(b) In the event Indemnitee is entitled to indemnification and/or advancement of Expenses with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain legal counsel selected by Indemnitee and approved by the Corporation (which approval shall not to be unreasonably withheld, conditioned or delayed) to defend Indemnitee in such Proceeding, at the sole expense of the Corporation or (ii) have the Corporation assume the defense of Indemnitee in the Proceeding, in which case the Corporation shall assume the defense of such Proceeding with legal counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage

legal counsel for such defense, and shall be solely responsible for all Expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and/or any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate legal counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its legal counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation (which consent shall not be unreasonably withheld, conditioned or delayed). The Corporation may not settle or compromise any proceeding without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a), the Corporation shall advance Expenses necessary to defend against a Claim pursuant to Section 8 hereof. If any determination by the Corporation is required by applicable law with respect to Indemnitee's ultimate entitlement to indemnification, such determination shall be made (i) if Indemnitee shall request such determination be made by the Independent Counsel, by the Independent Counsel and (ii) in all other circumstances in any manner permitted by the DGCL, so long as only disinterested directors are involved in the determination. Disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee. Indemnitee shall cooperate with the Person(s) making such determination with respect to Indemnitee's entitlement to indemnification, including, without limitation, providing to such Person(s), upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the Person(s) making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay Expenses of the Independent Counsel referred to above and to fully indemnify the Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event that the determination of entitlement to indemnification is to be made by the Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date, (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Absent a timely objection, the Person so selected shall act as the Independent Counsel. If a timely objection is made by Indemnitee, the Person so selected may not serve as the Independent Counsel unless and until such objection is withdrawn. If no Independent Counsel shall have been selected (whether due to a failure of the Corporation to appoint such Independent Counsel, an un-withdrawn objection from Indemnitee with respect to the person so appointed or otherwise) before the later of (i) thirty (30) days after the submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the date of such submission, the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding for which indemnity is sought, then (x) each of the Corporation and Indemnitee shall select a Person meeting the qualifications to serve as the Independent Counsel and (y) such Persons shall (collectively) select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) hereof, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the Person(s) making such determination shall, to the fullest extent permitted by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) hereof, and the Corporation shall, to the fullest extent permitted by law, have the burden of proof to overcome that presumption in connection with the making by any Person(s) of any determination contrary to that presumption. Neither the failure of the Corporation (including, without limitation, by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including, without limitation, by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e), if the Person(s) empowered or selected under Section 10 hereof to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a

reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by the Independent Counsel and Indemnitee objects to the Corporation's selection of the Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Effect of Settlement. To the fullest extent permitted by law, settlement of any Proceeding without any finding of responsibility, wrongdoing or guilt on the part of Indemnitee with respect to claims asserted in such Proceeding shall constitute a conclusive determination that Indemnitee is entitled to indemnification hereunder with respect to such Proceeding.

(e) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. The provisions of this Section 11(e) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(f) Actions of Others. The knowledge and/or actions, or failure to act, of any Representative (other than Indemnitee) of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 11 hereof that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 hereof, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) hereof within ninety (90) days after the Submission Date, (iv) payment of indemnification is not made pursuant to Section 4, 5 or 10(a) hereof within ten (10) days after receipt by the Corporation of a written request therefore, (v) payment of indemnification pursuant to Section 2, 3 or 6 hereof is not made within ten (10) days

after a determination has been made that Indemnitee is entitled to indemnification or (vi) in the event that the Corporation or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, Indemnitee, the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification and/or advancement of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) hereof that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) hereof that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by the Indemnitee of a material fact, or an omission by the Indemnitee of a material fact necessary to make the Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent permitted by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. In addition, the Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the fullest extent permitted by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; provided that, in absence of any such determination with respect to such Proceeding, the Corporation shall pay Liabilities and advance Expenses with respect to such Proceeding as if Indemnitee had been determined to be entitled to indemnification and advancement of Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise (together, the "Other Indemnification Provisions"). No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Other Indemnification Provisions and/or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. The Corporation shall not adopt any amendment to any of its Certificate of Incorporation or Bylaws, the effect of which would be to deny, diminish or encumber Indemnitee's right to indemnification under this Agreement or any Other Indemnification Provision.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity). The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by law, organizational or constituent documents, contract (including, without limitation, this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnitee and advance Expenses to

Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event that any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any insurance policy provided under this Agreement, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation of the Corporation under this Agreement by any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) or their insurers, affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity). Any indemnification and/or insurance or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity), with respect to any liability arising as a result of Indemnitee's Corporate Status or capacity as an officer or director of any Person, is specifically in excess of any Indemnity Obligation of the Corporation or valid and any collectible insurance (including, without limitation, any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement, and any obligation to provide indemnification and/or insurance or advance Expenses provided by any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entity) shall be reduced by any amount that Indemnitee collects from the Corporation as an indemnification payment or advancement of Expenses pursuant to this Agreement.

(c) The Corporation shall use its best efforts to obtain and maintain in full force and effect an insurance policy or policies providing liability insurance for Representatives of the Corporation or of any other Enterprise, and Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such Representative under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation maintains an insurance policy or policies providing liability insurance for Representatives of the Corporation or of any other Enterprise, the Corporation shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policy or policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. Further, in the event of a Change in Control or the Corporation's becoming insolvent (including being placed into receivership or entering the federal bankruptcy process) the Corporation shall maintain in force any and all insurance policies then maintained by the Corporation in providing insurance (directors' and officers'

liability, fiduciary, employment practices or otherwise) in respect of Indemnitee, for a fixed period of six years thereafter (otherwise known as a "tail policy"), and such coverage shall be non-cancellable and placed by the incumbent broker using the policies that were in place at the time of the Change in Control, and shall be placed with an insurance carrier with an AM Best rating that is the same or better than the AM Best ratings of the expiring policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to, and hereby waives any rights to be subrogated to, any rights of recovery of Indemnitee, including, without limitation, rights of indemnification provided to Indemnitee from any other Person or entity with whom Indemnitee may be associated (including, without limitation, any Sponsor Entity) as well as any rights to contribution that might otherwise exist; provided, however, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnitee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a Representative of the Corporation or any other Enterprise and (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 hereof relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly or to assume and agree to perform this agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Corporation (or any of its subsidiaries or any Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a Representative of the Corporation, by the Certificate of Incorporation, Bylaws and the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be

affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a Representative of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a Representative of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder.

(c) The Corporation shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's right to receive advancement of expenses under this Agreement.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 18. Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by electronic mail or facsimile if sent during normal business hours of the recipient; but if not, then on the next Business Day, (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications will be sent to the Company and the Indemnitee as specified below, or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any party may change such party's address for receipt of notice by giving prior written notice of the change to the sending party as provided herein.

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Torrid Holdings Inc.
18501 East San Jose Ave.
City of Industry, CA 91748
Attn: Brian Park, Secretary
Facsimile: [●]
E-mail: [●]

with copies to (which shall not constitute notice to the Corporation):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Joshua N. Korff, P.C., Michael Kim, P.C., and Aslam A. Rawoof
Facsimile: (212) 446-4800
E-mail: joshua.korff@kirkland.com, michael.kim@kirkland.com and aslam.rawoof@kirkland.com

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of the Proceeding in order to reflect (a) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (b) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 20. Change in Control. If there is a Change in Control, then with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnity payments and advance of Expenses under this Agreement or any provision of the Certificate of Incorporation or the Bylaws now or hereafter in effect, the Corporation shall seek legal advice only from Independent Counsel selected by Indemnitee and approved by the Corporation (which approval shall not be unreasonably delayed, conditioned or withheld), and such approval shall only include disinterested directors, even if not a quorum. Such counsel, among other things, shall render its written opinion to the Corporation and Indemnitee as to whether and to what extent the Indemnitee would be permitted to be indemnified under applicable law. The Corporation agrees to pay the reasonable fees of the Independent Counsel and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

Section 21. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Corporation and Indemnitee hereby irrevocably and unconditionally (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (b) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

Section 22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 23. Third-Party Beneficiaries. The Sponsor Entities are intended third-party beneficiaries of this Agreement.

Section 24. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

TORRID HOLDINGS INC.

_____

Name:
Title:

[Signature Page to Indemnification Agreement]

INDEMNITEE:

[●]

[Signature Page to Indemnification Agreement]

Exhibit 21.1

TORRID HOLDINGS INC.
List of Subsidiaries as of the completion of this offering

Subsidiary	Jurisdiction of organization
Torrid Parent Inc.	Delaware
Torrid Intermediate LLC	Delaware
Torrid LLC	California
Torrid Administration, Inc.	California
Torrid Merchandising, Inc.	California
Torrid Ohio, LLC	Ohio
Torrid Canada Inc.	Canada

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Torrid Holdings Inc. of our report dated April 9, 2021, except for the effects of the stock split discussed in Note 7 to the financial statements, as to which the date is June 23, 2021, relating to the financial statements of Torrid Holdings Inc., which appears in this Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Los Angeles, California
June 23, 2021

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Torrid Holdings Inc. of our report dated April 9, 2021 relating to the consolidated financial statements and financial statement schedule of Torrid Parent Inc., which appears in this Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Los Angeles, California
June 23, 2021